

"One Stop Centre " या योजनेअंतर्गत  
राज्यात कार्यरत केंद्रांमध्ये आदर्श  
कार्यपद्धती लागू करणेबाबत.

महाराष्ट्र शासन

महिला व बाल विकास विभाग

शासन परिपत्रक क्रमांक : बैठक-२०१७/प्र.क्र.२०९/का-२,

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मंत्रालय, मुंबई-४०० ०३२.

दिनांक : २८ ऑगस्ट, २०१९.

**संदर्भ :-** १. शासन निर्णय, महिला व बालविकास विभाग, क्र.संकीर्ण-२०१५/प्र.क्र.९५/का-२,  
दिनांक १ फेब्रुवारी, २०१६.

२. शासन निर्णय, महिला व बाल विकास विभाग, क्र.संकीर्ण-२०१७/प्र.क्र.२२२/का-२,  
दिनांक २३ मार्च २०१८.

३. केंद्र शासनाच्या महिला व बाल विकास विभागाने " One Stop Centre " चे कामकाज चालविणा-या केंद्र प्रमुख, व्यक्तीविशिष्ट कार्यकर्ता, डॉक्टर, /आरोग्य अधिकारी, पोलिस सहायक अधिकारी, कायदेविषयक सहाय्यक/वकील (Center Administrator, Case Worker, Doctor/Health Worker, Police Facilitation Officer, Legal aid Lawyer) यांच्यासाठी तयार केलेली आदर्श कार्यपद्धती. (Standard Operating Procedures)

४. मा.सर्वोच्च न्यायालय रीट याचिका(सिव्हील) क्र.५६५/२०१२, निपुण सक्सेना विरुद्ध केंद्र शासन व इतर या प्रकरणी मा.सर्वोच्च न्यायालयाचे दिनांक ३१ जुलै, २०१९ चे आदेश.

**प्रस्तावना :-**

संकटग्रस्त महिलांना तातडीने मदत मिळण्याच्या उद्देशाने केंद्र शासनाच्या महिला व बाल विकास मंत्रालयाकडून " One Stop Centre " ही योजना कार्यान्वित करण्यात आलेली आहे. त्यानुसार राज्यातील प्रत्येक जिल्ह्यात एक "One Stop Centre " सुरू करण्यात आले आहे. या One Stop Centre मध्ये कौटुंबिक हिंसाचार पीडित, लैंगिक शोषणाच्या पीडित, मानवी वाहतुकीस बळी पडलेल्या, अॅसिड हल्ल्यातील पीडित महिलांस वैद्यकीय सुविधा, पोलीस मदतकेंद्र, समुपदेशन केंद्र व कायदेशीर मदत इत्यादी सेवा उपलब्ध करून देण्यात येत आहेत. " One Stop Centre " योजना यशस्वीपणे राबविणेसाठी केंद्र शासनाने डिसेंबर २०१७ मध्ये मार्गदर्शक सूचना(Guidelines) तयार केलेल्या असून त्यानुसार राज्यातील केंद्रांचे कामकाज सुरू आहे. सदरील मार्गदर्शक सूचना [www.wcd.nic.in](http://www.wcd.nic.in) या संकेतस्थळावर उपलब्ध आहेत.

मा.सर्वोच्च न्यायालयाने उपरोक्त संदर्भीय क्र.४ अन्वये दिनांक ३१ जुलै, २०१९ रोजी पारित केलेले आदेश पुढीलप्रमाणे आहेत-

We direct all the States and the Union Territories to adopt the format and protocol of Detailed Reference Material for Standard Operating Procedures (SoPs) by the Ministry of Women and Child Development as published in the month of January २०१७."

मा.सर्वोच्च न्यायालयाच्या आदेशानुसार उपरोक्त संदर्भीय क्र.३ अन्वये केंद्र शासनाच्या महिला व बाल विकास विभागाने " One Stop Centre " चे कामकाजासाठी तयार केलेली आदर्श कार्यपद्धती(SoPs) नुसार काम करण्याच्या सूचना क्षेत्रीय अधिका-यांना देण्याची बाब शासनाच्या विचाराधीन होती.

**शासन परिपत्रक:-**

वरील पार्श्वभूमीवर केंद्र शासनाच्या महिला व बाल विकास विभागाने "One Stop Centre चे कामकाज चालविणा-या केंद्र प्रमुख, व्यक्तीविशिष्ट कार्यकर्ता,डॉक्टर,/आरोग्य अधिकारी, पोलिस सहायक अधिकारी, कायदेविषयक सहाय्यक/वकील (Center Administrator,Case Worker, Doctor/Health Worker, Police Facilitation Officer, Legal aid Lawyer) यांच्यासाठी तयार केलेल्या आदर्श कार्यपद्धती नुसार कामकाज करण्याच्या सूचना देण्यात येत आहेत. यापुढे सदरील आदर्श कार्यपद्धतीनुसार " One Stop Centre "चे कामकाज चालविण्याची जबाबदारी संबंधीत जिल्हाधिकारी व जिल्हा महिला व बाल विकास अधिकारी यांची राहिल. त्यानुसार सदरील आदर्श कार्यपद्धतीनुसार " One Stop Centre " मध्ये दाखल होणा-या पीडित महिलेस आवश्यक त्या सुविधा उपलब्ध करून देणे आवश्यक राहिल. या आदर्श कार्यपद्धतीची काटेकोरपणे अंमलबजावणी करण्याची दक्षता सर्व संबंधीत घटकांनी घ्यावी .सदरील आदर्श कार्यपद्धती सोबत जोडण्यात आली आहे.

सदर शासन परिपत्रक महाराष्ट्र शासनाच्या [www.maharashtra.gov.in](http://www.maharashtra.gov.in) या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक क्रमांक २०१९०८२८१३१५३१०८३० असा आहे. हा आदेश डिजीटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने,

(स्मिता निवतकर)

उप सचिव, महाराष्ट्र शासन.

प्रति,

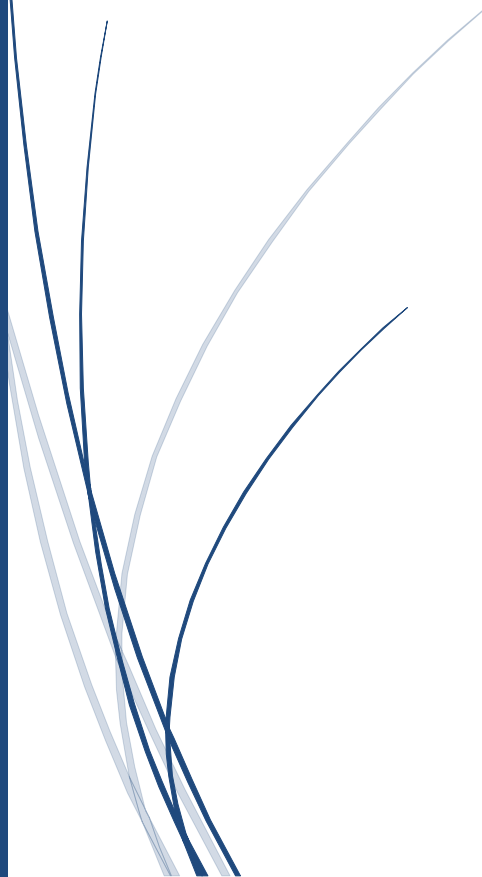
१. मा.राज्यपाल, महाराष्ट्र राज्य, मुंबई.
२. मा.मुख्यमंत्री, महाराष्ट्र राज्य, मुंबई.
३. मा.मंत्री, नियोजन / वित्त विभाग यांचे खाजगी सचिव, मंत्रालय, मुंबई.
४. मा.मंत्री, महिला व बाल विकास यांचे खाजगी सचिव, मंत्रालय, मुंबई.
५. मा.राज्यमंत्री, महिला व बाल विकास विभाग यांचे खाजगी सचिव, मंत्रालय, मुंबई
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८. आयुक्त,एकात्मिक बाल विकास सेवा योजना, नवी मुंबई.
९. सर्व मंत्रालयीन विभाग, मंत्रालय, मुंबई.
- १०.सर्व जिल्हाधिकारी
- ११.सर्व विभागीय उपायुक्त, महिला व बाल विकास विभाग.
- १२.सर्व जिल्हा महिला व बाल विकास अधिकारी,
- १३.निवड नस्ती/का-२.



# DETAILED REFERENCE MATERIAL ON STANDARD OPERATING PROCEDURES FOR ONE STOP CENTRE



**Ministry of Women and Child Development**  
**Government of India**  
**New Delhi**



**DETAILED REFERENCE MATERIAL ON**  
**STANDARD OPERATING PROCEDURES FOR ONE STOP**  
**CENTRE**  
**FOR**  
**CENTRE ADMINISTRATOR**  
**CASE WORKER**  
**DOCTOR/HEALTH WORKER**  
**POLICE FACILITATION OFFICER**  
**LEGAL AID LAWYER**

2017



**Ministry of Women and Child Development**  
**Government of India**  
**New Delhi**

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## **List of Abbreviations and Acronyms**

**AIR** – All India Reporter  
**CDPO** – Child Development Project Officer  
**CJS** - Criminal Justice System  
**CLAA** – Criminal Law (Amendment) Act, 2013  
**CrPC** – Code of Criminal Procedure, 1973  
**DIR** - Domestic Incident Report  
**DLSA** - District Legal Services Authority  
**DV** - Domestic Violence  
**FIR** - First Information Report  
**GBV** - Gender Based Violence  
**GWA** – Guardians and Wards Act, 1890  
**IO** - Investigating Officer  
**IPC** - Indian Penal Code  
**LCWRI** - Lawyers Collective Women’s Rights Initiative  
**MHA** – Ministry of Home Affairs  
**MIS** – Management Information System  
**MoH&FW** – Ministry of Health & Family Welfare  
**MWCD** - Ministry of Women and Child Development  
**NGO** – Non Governmental Organisation  
**OSC** - One Stop Centre  
**PFO** – Police Facilitation Officer  
**PO** – Protection Officer  
**POCSO** - Protection of Children from Sexual Offences, 2012  
**PWDV Act** - Protection of Women from Domestic Violence Act, 2005  
**SCC** – Supreme Court Cases Reporter  
**SC & ST (PoA) Act** - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989  
**SCW** - State Commission for Women  
**SHW** - Sexual Harassment of Women at Workplace  
**SJPU** - Special Juvenile Police Unit  
**SMA** - Special Marriages Act, 1954  
**SoP** – Standard Operating Procedure  
**SP** – Service Provider  
**STI** - Sexually Transmitted Infection  
**UOI** – Union of India  
**VAW** - Violence Against Women  
**WHO** - World Health Organisation

## **Index of Legal Provisions**

### **Civil Procedure Act**

Order XVIII

Order XXI

### **Code of Criminal Procedure**

Section 2(u)

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### **Indian Evidence Act**

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Section 326A

Section 326B

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Section 509

### **Protection of Children from Sexual Offences Act, 2012**

Section 19

Section 21

Section 23

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Rule 4(3)

### **Protection of Women from Domestic Violence Act, 2005**

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# INTRODUCTION

This set of Standard Operating Procedures (SoP's) is meant for use by functionaries of the One Stop Centre (OSC) as provided under the Ministry of Women & Child Development (MWCD) One Stop Centre Scheme (the Scheme). The SoPs provide the ethical and professional principles as well as step-by-step guidance on providing appropriate services to the aggrieved women/survivors who approach the Centre, either directly or through referral from other agencies such as the Police, Helplines, Hospitals, Protection Officers/CDPOs/community level outreach workers etc.

Following are the key functionaries of the OSC who are covered in this set of SoPs:

- Centre Administrator
- Case Worker
- Health Worker/Doctor
- Police Facilitation Officer
- OSC Lawyer
- Prosecutor

Additional guidance for other criminal justice system functionaries such as Police, and Judges may be developed, which focus on the linkages between these functionaries and the OSC.

The OSC covers women and girls affected by violence, both in the private and public sphere. Under the Indian law, violence against women is broadly covered as:

- Offences as provided under the Indian Penal Code, 1861; and
- Special legislations such as Protection of Women from Domestic Violence Act, 2005, Prohibition of Child Marriage Act, 2006, Indecent Representation of Women Act, 1956, Dowry Prohibition Act, 1961 and the Protection of Children from Sexual Offences Act, 2012.

Therefore, the SoPs deal with both criminal and civil procedures. The PWDV Act and the POCSO Act have special procedures and functionaries who are required to implement the law. For instance, for PWDVA, it is the Protection Officer (PO) who is responsible for recording a Domestic Incident Report (DIR) and filing an application before the Court. The question then is, once an aggrieved woman/survivor of domestic violence approaches the OSC, how will the OSC link with allied services in order to provide services such as psycho-social, legal, police aid and health care. Thus OSC will have to establish linkages with respective departments in order to provide these services to survivors. The SoPs provide guidance to the OSC functionaries on this.

In the section on Legal Pathways below, a flow chart of how the aggrieved woman/survivor's case would progress within the OSC and the legal system is provided.



This set of SoPs is based on a victim-centered approach to providing services at the OSCs. A victim-centered approach *is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a non-judgmental manner. It seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process.*<sup>1</sup> The OSC SoPs therefore, are based on an integrated and multi-sectoral effort for an effective response to survivors of violence against women and girls. It is envisioned that Centre would support survivors of violence in identification of medical care, medico legal care, provision of psycho-social support and counseling, provision of shelter services, filing of FIRs, legal aid, coordinated services from legal aid authorities, legal referrals and creating better access to justice.

Increasingly, across the world, there is a greater focus on a victim-centered approach to providing services, particularly within the justice system. A justice system focused on a victim-centered approach will create an environment in which VAW survivors are encouraged to report incidents and are supported throughout the process.

In this set of SoPs, instead of “victim”, the word(s) aggrieved woman/survivor has been used. This recognises that women who have faced violence are not passive and powerless but are individuals who exercise their choice with dignity and self-respect and are capable of overcoming the situation of violence.

## **GUIDING PRINCIPLES**

- Sensitivity in responding to the aggrieved woman/survivor and ensuring that her physical, emotional and psychological well being are the primary considerations.
- Respect for the privacy of the aggrieved woman/survivor and her family, and ensuring confidentiality of the case and her identity.
- Ensuring safety of the aggrieved woman/survivor and her family through rigorous safety assessment and planning, which must be reviewed on a regular basis.
- Ensuring timely response and services to the aggrieved woman/survivor. This is critical to ensure her well-being, protect the evidence and prevent the aggrieved woman/survivor from retracting or not cooperating with the prosecution.
- Coordination with other OSC functionaries as well as other agencies such as the Police, Hospitals, Lawyers, Prosecutors and other Government officials to ensure comprehensive support and services to the aggrieved woman/survivor.

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<sup>1</sup> ‘Standards For Providing Services To Survivors Of Sexual Assault’ (1998); Sourced from: <<http://www.njdcj.org/standar2.htm>>

- Ensuring follow-up of the case at every stage. For instance, the direct role of the OSC ends with providing the aggrieved woman/survivor with psycho-social counseling, medical treatment & examination, and legal advice. At this stage, the criminal justice system functionaries such as the Investigating Officer (IO), Prosecutor (and Private lawyer), and Courts will take over. However, even during this stage, a system of follow-up by the OSC and feedback from the relevant CJS functionaries should be ensured. This must happen both individually by the Case Worker and OSC lawyer and also through the Management Information System (MIS).

## **THE LEGAL PATHWAY**

It is expected that the OSC will respond to three major categories of cases: offences under the IPC; child sexual offences under the POCSO Act; domestic violence cases where civil relief is sought under the PWDV Act. Additionally, there may be situations where the aggrieved woman/survivor needs a remedy under civil law. For instance, a domestic violence survivor may want to initiate proceedings for divorce on the ground of cruelty or file for custody of the child. The OSC functionaries, thus, may be required to intervene and should have knowledge of civil laws and procedures.

Remedies available under civil laws can be broadly categorized as follows:

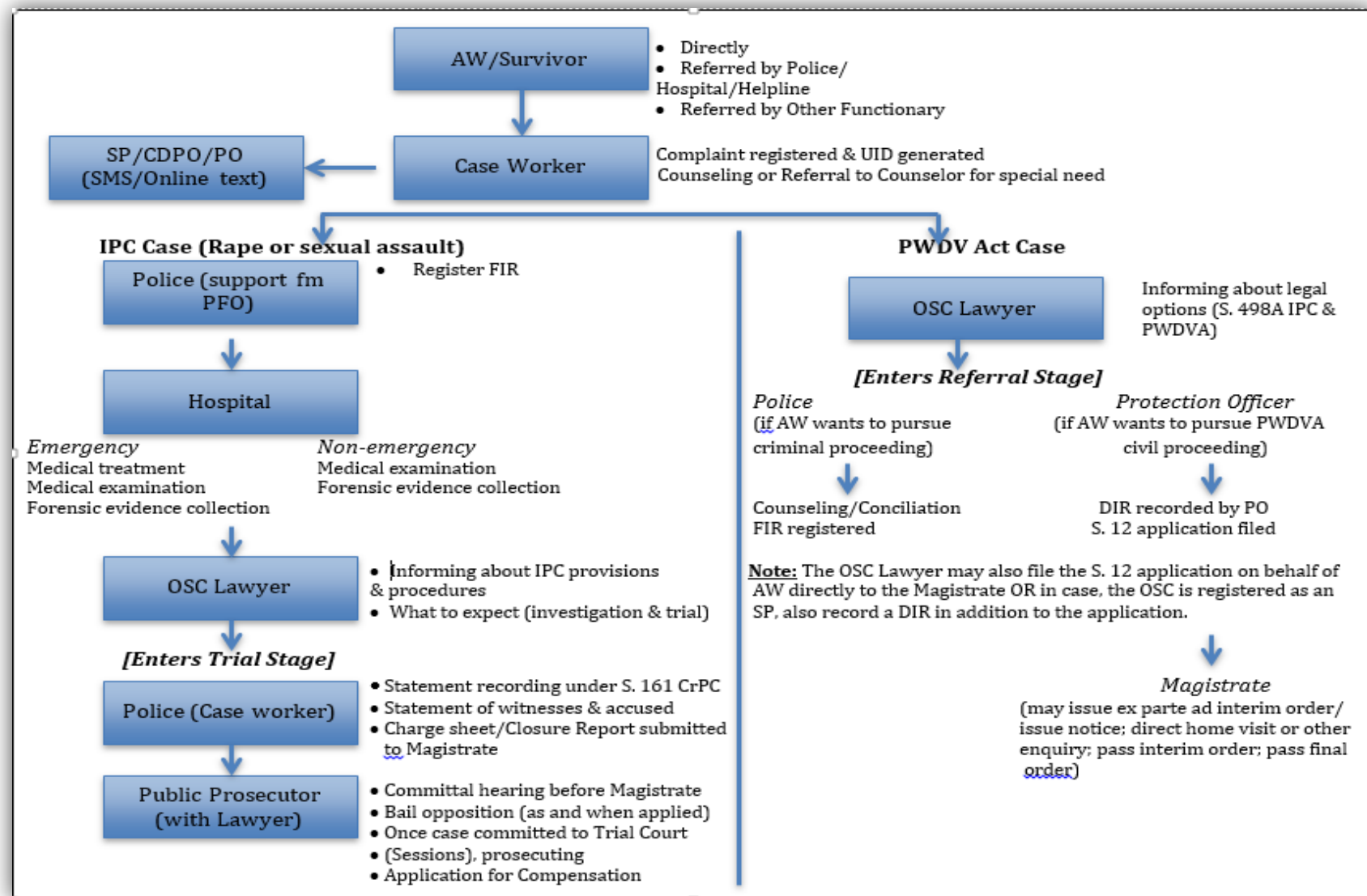
- (i) Claims under family law
- (ii) Injunctive and compensatory relief under the law of torts

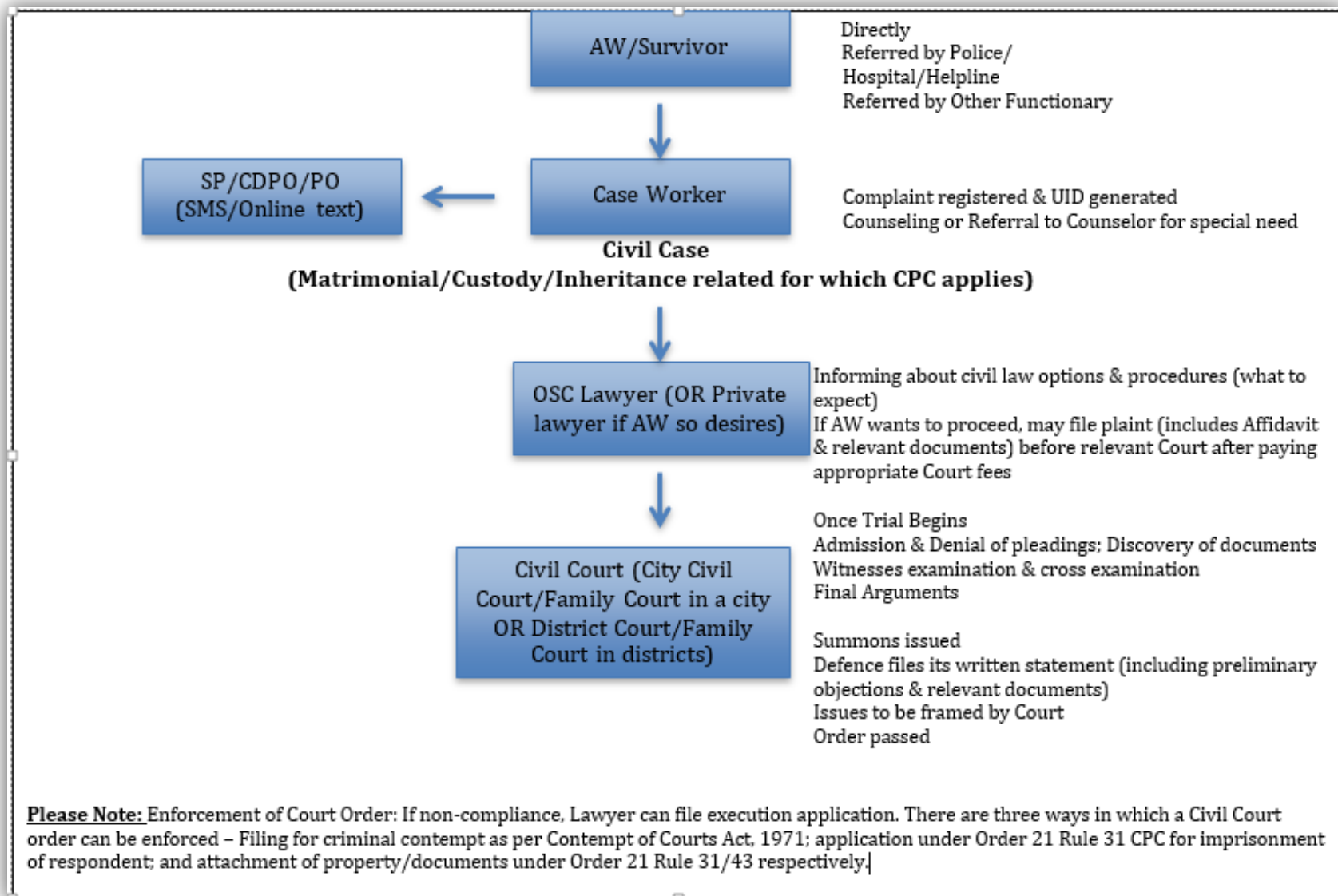
In India, codified religious laws (personal laws) govern rights within the family, including marriage, divorce, maintenance, inheritance, guardianship and custody. In addition to personal laws, secular civil codes such as the Guardians and Wards Act, 1890 (GWA) and Section 125 CrPC on maintenance apply to all religions. Finally, the Special Marriages Act, 1954 (SMA) allows civil marriages in cases where the couples do not want to marry under the religious law applicable to them.

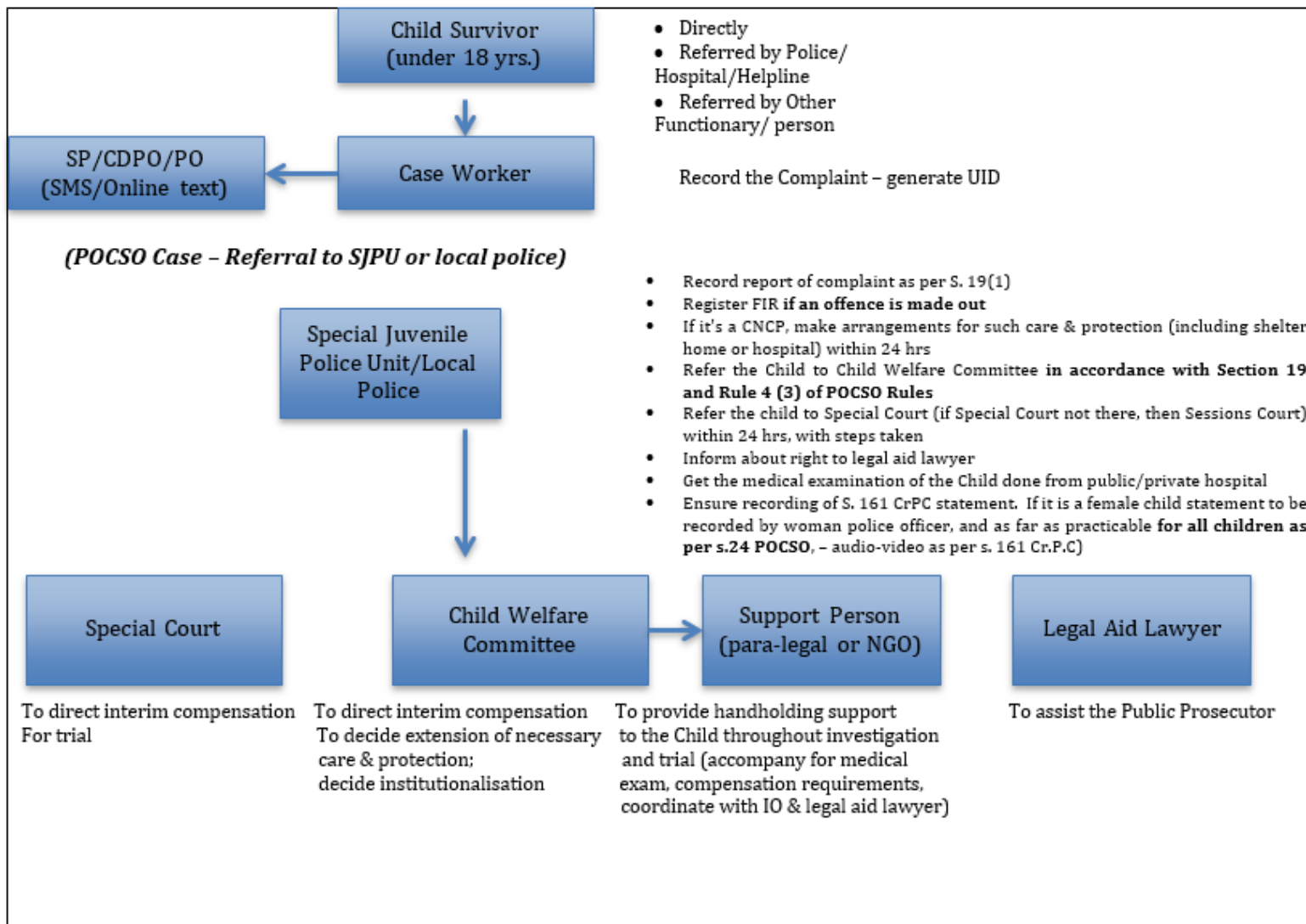
Keeping this in view, a flow chart of the legal pathways, which the aggrieved woman/survivor would be required to take, has been provided in the next pages. It traces the pathways the case will take for rape & sexual assault under IPC, for civil case, and for special legislations such as the PWDV Act and POCSO Act<sup>2</sup>.

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<sup>2</sup> For girls below 18 years of age, institutions and authorities established under Juvenile Justice (Care and Protection of Children) Act, 2000 and the Protection of Children from Sexual Offences Act, 2012 will be linked with the OSC.







## 1. STAKEHOLDERS-

- 1.1 **Department of Women and Child Development-** Administrative responsibility for implementation of the Scheme in coordination with relevant authorities/institutions. For providing shelter and rehabilitative support. DWCD also responsible for implementation of relevant laws such as the PWDV Act, 2005, the POCSO Act, 2012, the DPA, 1961 etc.
- 1.2 **Police** - For lodging of FIR, recording of statement u/s 161 and 164 CrPC apart from investigation and recommendation for compensation;
- 1.3 **Hospital (Administration)** - For providing medical treatment to the aggrieved woman and conducting medico legal examination of survivor and collecting relevant samples.
- 1.4 **State Commission for Women** – For providing allied services if there is a referral from OSC counseling, early intervention and legal assistance.
- 1.5 **Home department** – For seeking analysis of the forensic samples sent to the forensic science laboratory and ensuring that they reach the respective stakeholders in time (examining doctor for preparation of final opinion and police for recording evidence in their chargesheet)
- 1.6 **Directorate of Prosecution** – For prosecuting the case, including contesting the bail application of the accused and representing the State and aggrieved woman/survivor during the course of trial.
- 1.7 **Legal Services Authority at State/District level** – For counselling of aggrieved woman/survivor to assess their legal and other support service needs. Also, deciding the quantum and disbursing compensation under Victim Compensation Scheme. Providing witness protection in heinous offences. Providing free legal services to aggrieved woman/survivor, training of stakeholders and spreading awareness.
- 1.8 **Judiciary** – For recording statement u/s 164 of CrPC, witness protection and conducting trials, besides issuing recommendation for compensation and also awarding compensation in POCSO cases. In PWDV Act cases, conducting trial including issuing notice, directing home visit and other enquiry, and passing ex-parte *ad-interim*/interim, and final orders including directions for enforcement and conducting proceedings in case of breach of orders.
- 1.9 **Civil Society Organizations** – With experience of working with affected communities, provide support services to aggrieved woman/survivor facing violence such as psycho-social counseling, legal assistance, shelter etc. Also undertake trainings of stakeholders on gender and laws; undertake community mobilization and awareness-raising.

## STANDARD OPERATING PROCEDURE FOR CENTRE ADMINISTRATOR

Centre administrator is a woman who would be stationed at the OSC. Case workers as well as on call services such as lawyers, police, counsellors would have to report to the Case Administrator while handling women and girls facing violence.

**Role of the Centre Administrator** –The Administrator will be responsible to ensure the implementation of the following OSC objectives –

- To ensure coordinated immediate crisis intervention and psycho social services to women and girls affected by violence in the form of comprehensive, collaborative and integrated service delivery. These services would be linked with a 24-hour telephone services; medico legal and hospital services including emergency admissions
- To provide short term shelter at the OSC (services for accompanying children, girls of all ages and boys upto the age of 8 years), develop a plan for long term rehabilitation. This would include development of linkages with programs that offer education, income generation opportunities and the like for survivors. The OSC also needs to be linked with other MWCD programs that offer services for women and children in distress.
- To maintain an effective link and ensure an integrated service with police, Health system, Protection system (under PWDVA 2005), State & District Legal Services Authorities (free legal aid, pre-litigation clinics), public prosecutors & judiciary.
- To maintain standards of quality in psycho social, legal, police services provided by the OSC following SoPs as charted out to specific stake holders.
- To undertake a systematic review about the nature of complaints received from survivors, extent of support sought, experiences of engaging with different stake holders and mention it in the monthly reports to the Task Force at the district level. Such information generated through the OSC intervention would be used to feed back into personnel's training, the programme's strategic management & planning, as well as external advocacy on women's issues, especially gender mainstreaming by the State and private entities resourcing the social-development sector.

**Role and Responsibility of the Centre Administrators** –

- The Centre Administrator would be responsible for effective functioning of the Centre 24 hours and not deny access to any woman and girl survivor of violence.
- The Centre Administrator's primary role will be to monitor the functioning of the Centre, (including the work of the respective staff), facilitate capacity building,

guide and support the team of staff. She will be expected to ensure adherence to the protocols and SOPs devised for facilitation of good quality services to the survivors of VAW.

- Coordination with all the stakeholders (police station, hospital, legal aid, counselling), registration of cases in the absence of the IT Staff would be within the scope of her responsibility.
- The Centre Administrator will be the person who will coordinate with the Task Force at the district level on a monthly basis for guidance, support and advice while officially report through monitoring frameworks on a monthly basis.
- The Centre Administrator would approve the reports prepared by the IT Staff to be submitted to the Task Force at the district level.
- The Centre Administrator would also document or get documented the case studies/success stories as per the prescribed format.
- The Quarterly Report has to be submitted 15 days prior to the end of each Quarter.
- All the functionaries such as Police Facilitation Officer, Case worker, Counsellor, data entry operator, security services will report to the Centre Administrator.
- Centre Administrator will coordinate with CBOs specialized in addressing violence against women for providing technical input to the team working at the level of the OSC.
- Centre administrator will provide a platform for leveraging the support to enhance the effectiveness of the services provided by it. An important enabler for establishing the presence and enhancing the usage and effectiveness of the Centres, is the awareness within the local community of the services provided at the Centres. A focused and targeted outreach campaign along with training and capacity building at the national as well as regional levels will need to be rolled out. Centre Administrator will be responsible to devise awareness strategies to provide information about the functions of the OSC. Similarly in order to ensure that survivors receive services not available at the level of the OSC, she may also be referred to the government and non-government authorities/institutions providing these services within the local area where survivor reside/works.

### **Monitoring by Centre Administrator for OSC**

- Centre Administrator would hold a monthly review meeting with her team members about the activities undertaken at the level of OSCs. *(meeting would be steered on following accounts such as number of women and girls reporting to the OSC, referral pattern, expectations from the OSC, services received from case worker of the OSC, services received from lawyer, paramedical and police officials, challenges faced and efforts made to deal with them)*
- The Administrator has the overall charge of the OSC along with referrals, hence she will vest the responsibility with the case workers for provision of crisis intervention and psycho social services to women and girls. Administrator will also carry out case presentation meetings with the team of the OSC to monitor quality of services provided, difficulties faced by OSC staff members and efforts made to overcome them.



Case Presentation - is a method of monitoring counselling services provided by the case workers and identify good practices as well as challenges in counselling. It is known to prevent burn out and also assists in identifying areas of training and ongoing inputs for case workers. This is a practice that has emerged from the discipline of medicine and is applicable to all case work practices.

- A monthly report in the format prescribed in Annexure VI of Implementation Guidelines would be sent to the Task Force at the district level who in turn will send the same to the State Department of Women and Child Development.

#### Contents of the monthly report to District level Task Force

- Number of women and girls who reached the OSC
- Analysis of expectations from the centre
- Forms and nature of violence suffered
- Nature of services provided by case workers
- Number and nature of services provided by on call (Lawyers, counsellors, paramedical workers, police personnel )
- Number of referrals made and purpose for referrals
- Number of women and girls availing shelter facility at OSC
- Future plan for follow up with women and girls
- Challenges faced and steps taken
- Financial report

Please see Annex – VI of Implementation Guidelines for details of monthly progress report to be submitted by the district level Task Force to the State Government. The above indicators will facilitate preparation of this progress report.

- In addition, the Centre Administrator should maintain the following documentation at the level of OSC:
  - Dispatch Register (when letters and other documents are sent to stake holders or any person )
  - Visitor Register, Movement Register, Summons record Register, correspondence with stake holders.
  - Monthly Progress Report File
  - Attendance register

### **Annexure – I: Monitoring Indicators for Administrators**

- Ability to seek timely support and services from stake holders such as police, para medical workers, lawyers from DLSA.
- Ensure timely, appropriate and comprehensive services to women and girls reporting violence at the OSC.
- Generate a monitoring mechanism in the OSC to assess functions of the OSC and report the progress in a timely and methodical manner to the Task Force at the district level.
- Ensure adherence to the SOP and protocols for stake holders in providing services for women and girls
- Create a pool of resources and interlinkages with civil society organisations for mutual support and referrals
- Ability to call upon experts in order to ensure best care for women and girls facing violence

## STANDARD OPERATING PROCEDURE FOR CASE WORKER

Case worker is the first point of contact for a woman/ girl reaching the OSC. The case worker shall be a woman and she shall provide immediate crisis intervention services along with psycho social support to the woman/ girl affected by violence. Caseworker with the support from Centre Administrator will also coordinate services with the para medical worker, lawyer from DLSA, police personnel for required services. Case workers will work in shift and will be available at the OSC round the clock

The purpose of this SoP is to equip case workers to follow standards in assisting survivors of violence against women and girls. Assistance for ending violence against women has to be done with an understanding that the cause of violence lies external to women and is rooted in a patriarchal system. This SoP lists down the principles strategies to be adopted to provide effective services to aggrieved woman/survivor of violence.

### **Principles for handling cases of women / girls –**

**a. Principle of Autonomy:** Case intervention is based on the premise that women have a right to make decisions about all spheres of their life and circumstances. It is the responsibility of the case worker to enhance the ability of the woman/ girl to act autonomously and enable her to promote her well-being. This includes respecting the woman's right to decline or discontinue or resume counselling at any point. Case workers should not knowingly or inadvertently impose their own views on the aggrieved woman.

**b. Principle of Non-maleficence:** The principle is based on the assumption that any intervention carries some risk to survivor as it involves enabling the survivor to question abuse occurring in her life. The interventions made by case workers need to be informed by a sound analysis of the consequences of every action and should be based on a risk-benefit analysis. The principle also necessitates that case worker refrain from blaming the survivors for the abuse they have suffered, for this may be potentially harmful to them. Further, minimizing risk to the woman also means that interventions need to be contextualized in the socio-economic, political and cultural backgrounds and the operating patriarchal norms of women's lives.

**c. Principle of Beneficence:** It is a caseworker's duty to do good and actively work towards the best interests of the aggrieved woman. It is the caseworker's duty to act positively and proactively towards anticipating and preventing harm. The principle of beneficence is not just about reducing or minimizing harm but also to positively and proactively work towards the best interests of the aggrieved.

**d. Respect for dignity of the client:** Case worker should be sensitive, non-judgmental, patient, and attentive. She should recognize and acknowledge the huge step that women/ girls reporting violence are taking in seeking redressal services. They should develop an attitude and outlook that is not judgmental, nor discriminatory. They should have a

patient and encouraging approach so that the aggrieved woman is at no time hurried, harried or rushed. Case worker should not be distracted during sessions, nor appear lax in her approach. She must validate aggrieved woman's experience of violence and trust her story.

**e. Principle to Privacy:** Women and girls have a right to a private space (so that no one can see or hear while they converse) and privacy (absence of non-significant others) during case sessions. Only if women/ girls request for the presence of a third party should be respected. The third party present might be a supportive relative, neighbour, friend or a co-worker whose presence might be a confidence-building measure. Violence mitigation assistance involves intimate and traumatic sharing; and so necessitates option of one-to-one interaction. The case worker should only seek as much information as is essential and relevant to help the client through the entire process.

**f. Principle of Veracity and Fidelity:** Case worker should be honest and loyal in a relationship. Veracity requires that women are not provided false assurances or misled. Fidelity refers to the notion of loyalty and commitment to the woman. This also means ensuring that no information shared by the woman is shared in any other forum and no loose talk is carried out in the Centre or outside.

**g. Principle of Justice:** A case worker should be fair and not discriminate on the basis of class, caste, marital status, sexual orientation, religion, community, disability, etc. Case worker need to be aware of the various forms of discrimination prevalent in society and how these impact the lives of women. Vulnerabilities resulting from social, economic, and other discrimination should be clearly acknowledged so that special measures may be put in place when necessary.

**h. Efforts to Question Violence:** Intervention should be focused on strategies that empower woman to question abuse in her life. Case workers should denounce all forms of violence and hold dialogue with aggrieved woman that clearly conveys the message that all forms of violence are wrong and counter-productive.

**i. Locating the woman in the cycle of violence:** Case worker should be aware of concepts linked to counselling for mitigating violence against women and girls. An important concept is the one related to cycle and spiral of violence.

**j. Principles for seeking seek Police assistance -** Some survivors are denied help from the police, while there are others who refuse to register even a formal complaint. Therefore registering complaints forms an important building block to create evidence. The PFO in conjunction with the case worker at the OSC must be trained to understand these aspects and ensure that police extend their support to survivors.

**k. Assessing intensity of abuse and drawing up a safety plan:** Assessing intensity and frequency of abuse is a critical component of crisis intervention. Answers to these questions can enable case worker to determine safety and make a safety plan.

### Safety Assessment Checklist

A safety plan would have to be drawn up even if the woman answers “No” to the questions mentioned below:

- Has the physical violence increased in frequency over the past year?
- Has the severity of physical violence increased over the past year? (From kicks and blows there is use of instruments?)
- Does he or his family threaten to kill you? If yes, then do you believe that they can kill you?
- Does he and/or his family threaten you with second marriage? If yes, how serious do you think the threat is?
- Have you thought of committing suicide? If yes, then have you attempted it, do you have any plan of committing suicide?
- Is he violent towards your children and/or other family members? If yes, then has this increased in the past year
- Are you scared that the perpetrator of sexual violence and his family may try to harm you or defame you?

Safety Assessment for sexual violence affected survivors:

- Whether the perpetrator is known to the aggrieved woman/survivor? If yes, what is their relationship? (Please note: If the aggrieved woman/survivor is a minor, POCSO procedure will get activated)
- Whether the incident occurred in a place that the aggrieved woman/survivor frequents or which is part of her daily routine?
- Whether there was injury or threat to the aggrieved woman/survivor during the assault? Was any instruments or weapons used?
- Whether there was injury or threat to any other person close to the aggrieved woman/survivor (including parents/children)?
- How publicly accessible is the aggrieved woman/survivor’s home or workplace, and whether she has adequate support available there?
- Whether the perpetrator/accused has applied for and/or obtained bail

**I. Feedback & Follow-up: Follow-up** – Responsibility of case worker continue even after the survivor has left the OSC. Follow ups must be done on the basis of privacy, confidentiality and autonomy to make decisions. Case workers must also make follow ups with stakeholders to whom they have referred survivor for additional services (hospital, lawyer, police station, income generation activity, shelter etc.) Case workers may attempt to contact survivors only on safe numbers as per her convenience, and her feedback must also be recorded electronically and in detail. Registration form shall make a provision for contacting the woman/ girl at a “safe number” or a “safe address” as the current address/ number could be a place/number where she may be staying with abusive person, contacting her there can aggravate the situation of violence. Therefore, safe contact details shall be sought.

**m. Principles to engage with perpetrators of violence (Joint meetings):** Case worker should recognize joint meetings as a mechanism for negotiating for nonviolence. Joint Meeting provides a common platform for the woman in distress and the other party to openly talk about the issues, which each one has with the other in the presence of the case worker, with the purpose of sorting out the problem situation. In our patriarchal society, the woman is usually silenced and is not able to express her opinion.

**n. De-briefing:** In order to ensure quality service for survivors, case workers must be provided with the opportunity of debriefing either with another case worker or Centre Administrator. The purpose is to assess whether all aspects of case work were handled and difficulties faced were sorted out. De briefing can also help to develop a future plan for the same woman.

**o. Supervision:** Case worker shall have the opportunity for receiving supportive supervision. For this purpose the Centre administrator may involve an expert from a women's rights counsellor/ advocate as approved by the Task Force at the district level.

## **Annexure – I: Monitoring Indicators for Case Worker**

- Ability to prioritise the needs of the survivor and provide crisis intervention effectively.
- Follow a woman centered approach and abide by counselling ethics principles.
- Have the ability to provide coordinated services to the survivor, and have the capacity to negotiate with multiple stake holders who have a role to play vis a vis survivors of violence against women.
- Ensure creation of de briefing and supervision services to monitor quality of counselling.

## **Annexure II - Guidelines for Providing Crisis Intervention Services at the OSC**

### **Assistance to survivors –**

#### **A. Informed consent-**

- The case worker must make every effort to ensure that the aggrieved woman understands in full all the information provided to her before she gives her consent for intervention. The information explains the nature and process and the anticipated outcome; details about the OSC functionaries, its purposes, goals, services provided, procedures employed, the sphere of confidentiality (that is, people who may have access to information such as Centre Administrator, Lawyer or even other team members). Circumstances, when persons beyond the sphere of confidentiality need to be consulted, should be communicated. Aggrieved woman's consent is also required for all forms of recording of counselling sessions, viz., note taking and recording, as well as the presence of a third party besides the OSC functionary (such as that of a supervisor), and the purpose for the same needs to be explained. The aggrieved woman also has a right to deny such access or recording; a right that must be made known to her.
- Informed consent is essential to protect the aggrieved woman; not the OSC functionary or the Centre. Counselling may be recommended and aggrieved woman may be referred, but they cannot be forced to undergo counselling. They may accept or decline counselling. Where the individual declines to seek counselling services or chooses to discontinue the process at any stage, she should be informed that she can come back any time to resume without fear of being chastised or discriminated against by the OSC functionaries.
- Informed consent is not a one-point or one-time action. Such consent needs to be freshly sought every time there is a change in the conditionality's or context of intervention - whether it is the introduction of referral/person or a new feature of counselling.

#### **B. Confidentiality**

- The aggrieved woman has the right to expect that the information that she shares with OSC functionaries is protected and confidentiality is assured. As a cardinal rule, no information should be shared with the perpetrators. Most of the times, aggrieved woman may require multiple service; this necessitates appropriate referrals. OSC functionaries must protect confidentiality while making referrals and divulge only information relevant for the referral.



- All records of the aggrieved woman should be kept confidential and should not be accessible to anyone other than those within the sphere of confidentiality assured to the aggrieved woman. Only an aggrieved woman can seek access, if she so desires.
- Aggrieved woman should have a right to anonymity. When records are stored, used for peer review, transmitted electronically or used for any other beneficial purpose, it should be done in an anonymous manner.

**C. Locating the precipitating factor** - OSC functionaries should develop a methodical approach towards crisis intervention. Aggrieved woman may be unable to state her expectations clearly and may end up saying the same things again and again. OSC functionaries have to realize that sometimes women do not explicitly state issues for the fear that they may not be believed. These fears are based on how society views certain behaviours of women and label them. They also fear that confiding about an issue that is viewed by society as deviant may have repercussions for themselves. In other instances, if a woman is not conforming to a certain norm, she is usually treated badly. She may fear that if she confides about it, she may also lose the limited support that she received till then. Below is given an example about how to broach such issues with women. OSC functionaries must be able to validate her experience and also understand the precipitating factor leading to violence, this would be fundamental to determining the plan of action to stop violence.

Maria has lived as a single woman who is being constantly threatened by her brother to vacate her parental house. In her narrations, she describes the humiliation she faced every time she was asked to leave the house as her belongings used to be thrown out, and she would be abused in front of the other residents. She has lived this way for the past 6 years. OSC functionary would have to delve in to how she continued with life after she was thrown out of the house. Maria's account gave certain ways of living on her own in order to prevent sheer destitution. She had befriended a local woman who used to provide her space to keep her belongings in the day. She had a good relation with her employer where she worked as a maid. Her employer recommended her to take care of an old lady at night. In this manner she was also able to get a shelter. When the OSC functionary is able to abstract and appreciate Maria's capacity to overcome even the most difficult situation, Maria would also become more aware of her abilities to cope with her situation.

**D. Exploring coping mechanisms** – OSC functionaries have to be able to explore the underlying coping mechanisms that women adopt while living with abuse. Every woman living in an abusive situation makes efforts to change her situation. This is important because this resilience is what helps her to stand up to violence. An OSC functionary has to abstract how the woman has coped from her narrations.

**E. Connecting individual oppression to gender identity** - Women are commonly held responsible for the violence they face. Their performance regarding their role as mothers/wives/daughters/sisters is often criticized. Thus women also internalize such feelings and strive to perform their roles better. This is because they have internalized these expectations due to their socialization. The aim would be to state that violence is not an individual act where a person loses control but, it is a way of compelling women to conform to the societal accepted roles. The case worker can take examples from the woman's life itself and explain how individual acts of violence she faces are related to her gender roles.

**F. Addressing vacillations** - As the issue of relationships is extremely complex, coming to any decision regarding terminating/changing/negotiating a violent domestic relationship is hard. Often women, who had decided upon ending a relationship, may change their mind and continue to stay in it. Some women negotiating for a better relationship decide to eventually end it. But most women feel ambivalent about making that final decision. What is important for the OSC functionary is to be aware of reasons to continue in a relationship. The reasons are various; often women are economically dependent on the abusive person, there are fears of living alone, as she would get a label of being a loose woman, children are involved, if she is single she may not have any shelter, at times she hopes that the abusive person may change and the like. So it is important for the OSC functionary to encourage the woman to reflect upon her reasons to stay in a relationship. If the OSC functionary is aware of the reasons for ambiguity, she would be better equipped to handle the situation.

**G Exploring and responding to sexual abuse-**

- OSC functionary may receive women who have been sexually abused. Whenever a woman talks about abuse that she is facing, an OSC functionary must explore about sexual violence. This is because most forms of abuse are invariably accompanied by sexual exploitation. So it is important for OSC functionaries to be comfortable about sexuality itself. This comfort is usually acquired through receiving training on the issue. Similarly those who counsel should be able to locate sexual violence in the context of power and control. Such an explanation should be provided to the woman. Sometimes women report sexual exploitation from an intimate partner, while sometimes it is from a father-in-law, brother-in-law or even her father or brother. When such incidents are shared, it is important for the woman to feel validated, so the onus of counselling should be to remove the blame from her. It has to be explained to the woman that such exploitation is an act of claiming a right over the woman's body. The goal is to encourage the woman to speak about it, and get rid of the shame about it.

- Women often find it difficult to accept that the cause of violence lies external to her. In order to avoid violence, some women withdraw from a situation because of the fear that they may provoke violence. Women carry the feeling that if the abusive person is pleased, he may not be abusive. OSC functionary has to identify such a mind-set and has to focus on the fact that avoidance strategies do not work in reducing violence. In fact confronting violence rather than avoiding will make the abusive person rethink before inflicting further abuse. Due to being exposed to violence constantly some aggrieved woman may often face a feeling of learnt helplessness, it indicates that no matter what efforts they make violence won't stop. OSC functionaries have to recognize such a mind set and enable the aggrieved to reflect on her coping mechanism and help her to overcome such feelings.
- Another common expectation is also using violence in order to get back to the abuser or asking the OSC functionary to use such mechanism such as scaring the abuser, reprimanding them, hitting them and so on. However, OSC functionaries have to denounce all forms of violence and discuss the counterproductive aspects of using violence as a way of teaching a lesson to the abuser. This should be done without the aggrieved woman feeling rejected or not helped but discussing the rationale for denouncing all violence and developing strategies for confronting violence.

**H. Safety plan** - These questions could throw light on the extent of risk to her safety. Information on how she saved herself from further beatings, who intervened to end the beatings, who brought her to the hospital, can give the case worker an understanding about the woman's capacity to resist physical abuse as well as any external support available to the woman. Asking an aggrieved to narrate the past episodes of violence, can also provide signs of how she has dealt with episodes of violence. Some women just bear it because they think that resisting violence could intensify it further, while some women may hold the hand of the person. OSC functionary's insight is useful in developing methods of resisting abuse.

Similarly, when the episodes of physical violence are so bad that it requires hospitalisation, OSC functionary needs to explain that staying away would give her some time to think of the future steps that she can take. Often women have nowhere else to go. In such situations, a formal shelter can be suggested. This place could give the woman an opportunity to decide upon a future course of action. But in case for some reasons, the aggrieved do not like to stay in formal shelters then staying with friends or relatives can also be suggested.

**I. Cycle of violence** - This concept was coined by Leoner Walker in 1979. It was identified on the basis of women's narratives in the United States of America. Cycle of violence is a cycle comprising of tension building phase, abusive incident and followed by honeymoon phase. In the tension building phase the survivor is scared, unable to

understand the increasing tension with abuser, where as in the second stage there is severe violence and abuser makes the survivor responsible for the violence. This is then followed by the 3<sup>rd</sup> phase where the abuser is apologetic, promises to change behavior and sometimes is also manipulative and wants the woman to continue the relationship. Case workers can help the woman understand whether she has experienced similar phases and if yes steps can be taken to break the cycle of violence.

Another important concept that is useful to discuss with survivors of domestic violence is the “spiral of violence” This is a concept credited to Masum - a rural based organization which evolved the concept on the basis of women’s narratives in health clinics. Married women when faced with abuse return or are sent to the parental family. The parental family without helping the daughter to question violence sends her back to her marital family. Sometimes they may send her back with fulfilling economic demands, allowing her to stay for a few days and so on. The aggrieved woman keeps going back and forth to the parental family and increasingly the support from them starts diminishing. Marital family understands the rejection from the parental family and abuse heightens because they see that the parental family is also not keen to help her. The spiral down ward coil further tightens and ends in either the survivor’s subjugation or death. OSC functionary have to assess whether a survivor is in such a situation of abuse and help her to identify it in her life and break the cycle of abuse<sup>3</sup>.

#### **J. Identifying Suicide ideation and safety planning**

- The issue of women attempting suicide is closely related to that of violence. Women facing violence attempt suicides for various reasons, some may do it in order to escape an unbearable situation of violence, some may do it as a cry for help while some may have lost the willingness to live due to abusive conditions. One of the important questions to be asked to every woman is whether thoughts or wishes to end her life have crossed her mind. Not every woman acts upon those thoughts but many do. Therefore it is important to probe about such feelings.
- Probing about a suicide requires certain skills. The case worker can begin by acknowledging and stating that it is difficult to articulate feelings about an attempt. It may also help to say that women attempt suicide because there is no one to listen to their side of the story. More so many women do so because there is no information that they can receive support. This can help the woman to articulate what drove her to attempt suicide. It may also help the case worker to ask a woman about her mood, does she feel low, sad, or feels crying all the time. If this is the case, it is desirable that an explanation of these symptoms should be given and how they are connected to the experience of abuse should also be shared with the woman.

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<sup>3</sup> (Asian and Pacific Islander Institute on Domestic violence 2002)

## **K. Police Assistance**

- There are women who have repeatedly visited the police station to settle their “case”. In such instances the police call the abusive person and threaten him with dire consequences. In other situations, they just put the abusive person behind bars for some time and then let the person out. Most of these steps are taken in an *ad hoc* manner. The necessary documentation about these cases is not done at all. The OSC functionary can state the importance of creating a documentary evidence for violence the women may have faced. Such *ad hoc* methods are used to evade documentation. Hence, there is a need to stress upon the importance of a written complaint (and retaining its acknowledgement).
- Simultaneously the OSC functionary can ask the woman to reflect upon how she views the outcome of a police intervention. It is often seen that women’s experiences with the police are not positive. These so called “settlements” done by the police amount to arbitration. Therefore OSC functionaries have to be cautious when they refer women to police complaint as chances of implicating men on false pretext is also high. One example is of the 498A IPC, where police do call for meetings with the abusive person before filing an FIR. Women should be informed of this process and that they can ask for documentation related to the meeting conducted by the police with the abuser. In sexual violence, the police cannot carry out any joint meetings with the abuser.
- The next step is to explain the nature of complaint that can be made depending on the nature of the violence. Differences in cognizable and non-cognizable offences are to be explained in this context. This should be done because women often ask the police to register a “big” case. Caution has to be used in making such complaints because it is often the woman who faces the backlash. Chances of aggravation of violence also cannot be ruled out.
- Often aggrieved woman has not been taken seriously at the police station. When they repeatedly go to the police stations, they are even shunned and ridiculed. Hence it is important that the woman appear confident in the police station. In case, the police refuse to write down the complaint, she can give a written application of the violent episode. She can ask them to sign a copy of the same and give it to her. In case they still refuse, she can note down the batch number and the name of the police personnel.
- When women leave the house because of escalation of abuse, it is often seen that the abusers put a false allegations against the aggrieved woman. It is important to tell the aggrieved woman to write an application whenever she leaves an abusive home, decides to move her belongings from that house to another place, or take the children with her to a non-abusive place. A contact number or address which is safe for communication with the woman must be sought at the first contact. During telephonic part of intervention process, place of meeting/reaching the survivor

should be fixed as per her own consent and convenience. If the caller/complainant is not present at the decided/informed place which is not her home, then case worker may call again on the same contact information provided. Schedule another date for the meeting or carry out further intervention as required by the emergent situation there. The caseworker must do Home visit/s with extreme caution. The help of Police can and should be taken if the OSC functionary thinks that there is too much hostility against the woman.

#### **L. Joint Meeting**

- The OSC functionary should at the outset believe the woman and does not judge whether she is right or wrong. This trust has to be communicated to the woman seeking support.
- The purpose of joint meetings is to negotiate for non-violence. Many a times the family of the abusive person start fault finding in the aggrieved woman and blaming her for the situation, they may also have a list of complaints against the aggrieved woman. The OSC functionary has to reiterate that violence is not justified in any situation and that differences have to be discussed in an amicable manner and not by raising hand or voice.
- One strategy in building self confidence in an aggrieved woman is to ask the woman to actually enact the way in which she would put forth her points. This can be done in the form of a role play. This is important because often the other person/people make allegations against the woman to demean her, so she has to be prepared to stay calm. Telling the woman that the OSC functionary is on her side and trusts her completely can also help her to stay calm and confident. It is pertinent that the OSC functionary will not get in to who was right or wrong, as the focus of the meeting is to state that beating her or abusing her is unacceptable.
- The OSC functionary should get a detailed account of the woman's life story pertaining to violence. Questions such as whom does she want the joint meeting with, has such an effort been made in the past, what was the outcome of those meeting need discussion. The OSC functionary needs to be aware of the aspects that need to be covered in the joint meeting. Such a discussion helps in creating a concrete base for a joint meeting.
- Meeting should start with an introduction of the OSC functionary and the parties concerned. The objective of the meeting should also be explained. It should be communicated to the perpetrators that the purpose of the joint meeting is to end violence.
- Allow the perpetrator to talk first. OSC functionary should appreciate the perpetrator for coming for the joint meeting as that indicates that he is interested in continuing the relationship.

## **Challenges in Crisis Interventions –**

**A. Dual and Multiple Relationships:** Dual and multiple relationships occur when the OSC functionary and aggrieved woman have a relationship besides the working relationship. These could be when the aggrieved woman is also a friend, colleague, student, neighbour or even an employee. It is possible that OSC functionaries may also be engaged in activities geared towards social change that are beyond case intervention. Interaction with the aggrieved woman, outside the OSC, may become unavoidable and inevitable. When there is potential for a dual relationship, supervisors and experienced peers, amongst others, need to be consulted. A clear risk-benefit analysis needs to be made and presented to the aggrieved woman so that the woman can make an informed decision.

**B. Maintaining Boundaries:** A boundary is the framework within which OSC relationships will function. They are required, since boundaries set the parameters within which services are delivered and ensure that relationships developing between aggrieved woman and OSC functionary are safe for the woman. Boundaries typically include length of a session, time of session, use of touch for comforting the aggrieved woman, and so on. These need to be defined for every OSC functionary at every OSC. Any act of the OSC functionary that could lead to subjectivity or scope for exploitation, should be discouraged and discontinued. OSC functionaries should not accept gifts from aggrieved woman. The aggrieved woman should be told the reason for this stand so that she does not feel offended or rejected. Any physical, verbal or non-verbal conduct of a sexual nature or a conduct which may be construed as being of a sexual nature is prohibited.

**C. Power differential:** There are power differentials between OSC functionaries and aggrieved woman, one of the reasons is that those who come to the OSC set up are in a vulnerable position and are in need of help from those who are working in professional capacity at the OSC. This power differential may further be exacerbated because of differences in economic status, religion, education, caste, marital status, community or even sexual orientation. OSC functionaries need to recognize and acknowledge this fact. OSC functionaries are duty-bound to strive to reduce power inequities while working with marginalized groups and with women facing domestic violence. They should aim to make the relationship more egalitarian and participatory where the functionary is not just the "giver" and the aggrieved woman the "acceptor". The aggrieved woman should be encouraged to contribute towards decisions regarding the course of assistance or even their expectations from assistance provided at OSC.

**D. Competency:** There are three components of competency; competency with respect to expertise, emotional competency and cultural competency. All three are essential to not just fulfil the role of a functionary effectively, but also to prevent harm. Self-growth

is a continuous process. OSC functionary need to be well-informed and continuously seek required training in areas of expertise. This requires that the OSC functionaries be aware of their own limitations of knowledge and information. Competency in terms of expertise also consists of knowledge (What), skills (how), judgment (when), and diligence (commitment). It also implies that there should be an accurate representation of one's qualifications and regular supervision must be sought. Cultural sensitivity allows the OSC functionaries to understand the trauma and coping mechanisms of aggrieved woman in the context of caste, religion, marital status, age, sexual orientation and disability. Cultural competency allows OSC functionaries to use this understanding and sensitivity to enhance the aggrieved woman's resistance to violence, but not to justify the violence.

**E. Protection and Self-care of the OSC functionary:** While assistance can be a very rewarding experience, the nature and intensity of incidences of domestic violence and the high volume of work undertaken by OSC functionaries can take a toll on their emotional and physical strength. They could themselves suffer secondary traumatic stress (STS) or even serious burn-outs. Self-care for OSC functionaries is critically important. Training, continuous professional development, regular supervision, an active support network and regular breaks from work are essential if the OSC functionaries are to continue working effectively. OSC functionaries may need to deal with contradiction between their own personal life-experiences and their training as care provider. They may themselves need ongoing support and supervision.



### Annexure III – Guideline Chart for Case/Health Worker

#### IV. What are some of the signs and symptoms that can help you in identifying women facing domestic violence?

Gynaecology/ Obstetrics	Medicine	Casualty	Pediatric	Surgery
<ul style="list-style-type: none"> <li>History of assault</li> <li>Repeated Pregnancy</li> <li>Repeated birth of girl child</li> <li>Spontaneous abortions</li> <li>MTP cases</li> <li>Reversal of TL</li> <li>Unwed mothers/ Pregnant widows</li> <li>Chronic Leukorrhea</li> <li>Post-partum psychosis</li> <li>Injury marks on labia, breast, and/or other sexual organs</li> <li>Abruption of placenta</li> <li>Pelvic Inflammatory Disease</li> <li>Infertility</li> <li>Multiparity</li> <li>All ANC/cases</li> <li>History of fall during pregnancy</li> </ul>	<ul style="list-style-type: none"> <li>History of consumption of poison</li> <li>Breathlessness</li> <li>Fainting spells</li> <li>Swelling/tenderness</li> <li>Repeated health complaint with normal reports</li> <li>Chronic Anemia</li> <li>Constant body ache, headache, and/or backache</li> <li>Sudden weight loss</li> <li>Tuberculosis (TB)</li> <li>Pyrexia of unknown origin</li> <li>Chronic patch of TB</li> <li>Convulsions</li> <li>Irritable Bowel Syndrome</li> <li>Loss of appetite</li> </ul>	<ul style="list-style-type: none"> <li>Assault</li> <li>Poisoning / Attempted Suicide</li> <li>Bums</li> <li>Fractures</li> <li>Falls</li> <li>Pregnancy with history of fall / assault</li> <li>Women with unexplained bruises, CLW, lacerations, and/or abrasions</li> <li>Repeated health complaints despite normal reports</li> </ul>	<ul style="list-style-type: none"> <li>Child abuse (all cases)</li> <li>Sexual abuse</li> <li>Lack of concentration</li> <li>Chronic abdominal pain</li> <li>Repeated headaches</li> <li>IW, contusion, lacerations, bruises</li> <li>White discharge prior to attaining puberty</li> <li>Burning micturition</li> <li>Child not breast-fed</li> <li>Bed-wetting</li> <li>Anemia</li> </ul>	<ul style="list-style-type: none"> <li>History of assault</li> <li>Abdominal trauma</li> <li>Bums</li> <li>Reporting Falls</li> <li>All women with IW, Contusion, lacerations, and/or bruises</li> </ul>
				<b>Skin</b>
				<ul style="list-style-type: none"> <li>STIs</li> <li>RTI</li> <li>HIV+ and AIDS patients</li> <li>Repeated allergies</li> <li>Eczema/Eczematous change</li> <li>Allergic rashes around the neck, thighs, waist, and/or forehead</li> <li>Fungal infection</li> </ul>
	<b>Orthopaedic</b>	<b>Psychiatry</b>	<b>ENT</b>	<b>Dentistry</b>
	<ul style="list-style-type: none"> <li>All fractures</li> <li>All falls/assaults at home</li> <li>Minor sprains</li> <li>Ligament injury</li> <li>Contusions</li> <li>Chronic ache in back, shoulder, neck</li> </ul>	<ul style="list-style-type: none"> <li>Depression</li> <li>Insomnia</li> <li>Attempted Suicide</li> <li>Anxiety / tension</li> <li>Self harm</li> <li>Obsessive Compulsive Disorder</li> <li>Eating disorders</li> <li>Substance abuse</li> <li>Repeated health complaints</li> </ul>	<ul style="list-style-type: none"> <li>Perforated eardrum</li> <li>All injuries and fractures</li> <li>Locked jaw</li> <li>H/o reduced hearing capacity</li> <li>Chronic discharge from ears</li> <li>Sudden loss of voice</li> <li>Difficulty in swallowing</li> </ul>	<ul style="list-style-type: none"> <li>Jaw fracture</li> <li>Broken teeth</li> </ul>
<b>Ophthalmology</b>			<b>VCTC</b>	
<ul style="list-style-type: none"> <li>Eye injury</li> <li>Bruised eye</li> </ul>			<ul style="list-style-type: none"> <li>All HIV+ cases</li> <li>All remaining patients</li> </ul>	

## STANDARD OPERATING PROCEDURE FOR PARA MEDICAL WORKER

This SOP is aimed to provide specific steps to the health worker to assist a woman or a girl child seeking support of the OSC. The SOP lays down guidance for health worker on how to explain the purpose of medico legal examination and provide treatment for basic psycho-social care and the like.

### Working definition of the Para medical worker-

This person could be a trained nurse/ ANM/ Doctor (MBBS/ BAMS/ BHMS/ Unani) or qualified para-medics. She would be called by the OSC Administrator as and when there is a requirement for health care services to the woman/ girl facing violence. Please note that para-medical worker shall be a woman only.

The Para medical worker would be responsible for facilitation of medical therapeutic and medico legal support from the hospital/health centre.

### Role –

Para medical worker shall accompany the aggrieved woman to the hospital/ health centre and facilitate medical care and medico legal examination.

### A. Guiding Principles while communicating with woman/ girls –

- **Creating an enabling atmosphere and establishing trust** – Health worker should be aware that any form of violence is known to cause physical, emotional, social and economic consequences, which can jeopardize the well-being of survivors and their families. Additionally lack of information about negative health consequences may lead survivors to hide such incidents. So the health professional should not blame the survivor in case of delay in reporting. In fact the health worker/professional should communicate to the survivor that reaching the OSC was an act of courage.
- **Demonstrating a non-judgmental attitude-** Health worker must ensure confidentiality of information and be non-judgmental and supportive. Only when such an attitude is demonstrated would the survivor feel comfortable to reveal history of abuse.
- **Demystifying medical procedures** –Health professionals must be aware of the inherent hierarchy between the health provider and survivor. Therefore in the course of examination survivors hesitate from asking questions. Health worker must make efforts to put the survivor at ease before examination. Some steps to do this would be the use of simple and non-technical language.
- **Addressing survivor's emotional well-being** –Health worker must be aware that their role is not restricted to only medical treatment but rather comprises of also psychological support. Health worker is best poised to do so in the course of medical history seeking and examination.

## **B. Steps in providing comprehensive health care for domestic violence survivors**

- **Probing about details of the domestic violence related episodes** – When para medical worker brings the survivor to the health setting, she must ensure that the health professional examining the survivor is respectful. Health worker must ensure that the examining doctor has asked the survivor about current as well as past episodes of abuse.
- **Medical care for survivors** -Health worker must have knowledge of the potential health consequences that survivors may suffer because of domestic violence. This knowledge will allow them to speak to the examining doctor about the treatment and follow up plan. Caution should be exercised when referring a survivor who suffers from severe mental health consequences as a result of abuse. In such circumstances health professionals must be equipped with a sound understanding on the interlinkages of violence against women and its mental health effects as there is a concern about labeling a survivor without having adequate knowledge or information about the circumstances that led to mental health impact.
- **Documentation of domestic violence at the hospital** – Health worker must ensure that the documentation related to the abuse of the survivor is done in the words of the survivor. Language such as “alleged” should be refrained from and language such as “patient narrates -----” should be adopted. History of abuse and treatment provided along with follow up plan should be documented in a comprehensive manner. The health worker should explain to the survivor the importance of medico legal documentation in cases of violence. The fact that such a documentation can be used in the court if she decides to pursue a legal case.

## **C. Specific redressal systems under the PWDVA –**

The PWDVA lays down specific responsibilities for health professionals in responding to survivors facing domestic violence. Health professionals role include immediate medical care, support, information about the PWDVA, its provisions.

PWDVA, 2005 which came in to force in 2006 has identified “medical facility” as a key player in the implementation of the Act. It has laid down several roles vis a vis medical facility in Section 7 read with Rule 17. A medical facility cannot refuse treatment to an aggrieved woman under any circumstances. Further, the person in charge of the medical facility is required to make a domestic incident report (DIR) if it has not been already made and forward it to the Protection Officer (PO) of the area. The woman should be given a copy of the medical report free of cost.

There are specific relief orders that a survivor can seek under the PWDVA especially from the health system. Compensation order and monetary relief order are based on the psychological and physical health consequences faced by women in instances of domestic violence. Health worker should inform the woman about the PWDVA as well as relief orders that she can avail if she decides to pursue a case under PWDVA.

## D. Responding to Sexual Violence –

The health worker is expected to coordinate provision of medico legal care. Components of medico legal care would constitute seeking consent, carrying out medico legal examination, treatment, psychological first aid in the course of examination and provision of medico legal report free of cost to the survivor. The role of a health professional has been clearly laid down in Criminal Law Amendment Act (CLA) 2013. Health worker must have knowledge about role that is expected of a health professional in order to facilitate best care for survivors.

Ensuring a dignified treatment for survivors – Health worker must be equipped with the information that health systems are not sensitive to women who had faced sexual violence and so survivors often face ridicule and humiliation. Equipped with this information health worker must ensure that survivors be treated with dignity at the hospital as well as OSC.

Facilities providing medico legal care -Section 357C of the Criminal Law Amendment Act 2013 mandates hospitals, both public and private, to provide immediate first-aid or medical treatment, free of cost, to survivors of sexual assault. This cannot be denied for the want of a police requisition. Refusal to provide treatment and medico legal examination is a punishable offence under Section 166B of the Indian Penal Code. Once the health worker will have such knowledge she would be equipped to negotiate for medico legal care at any hospital.

Definition of sexual violence – CLA 2013 have both expanded the definition of sexual violence, bringing in its ambit forced oral, anal, vaginal acts which may be penetrative or non-penetrative in nature. Such acts may also comprise of use of objects and instruments and may manipulate any part of the survivor (adult's body) such as vagina, urethra, mouth and anus.

Limitations of medical evidence - The health worker besides being well versed with the components of medico legal care must also be aware of limitations of medical evidence and must not essentialise the presence of medical evidence. CLA 2013, Sec 375 Explanation 2 clarifies *“that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact be regarded as consenting to the sexual activity”*. Explanation clarifies that injuries either to the body or to the genitals need not be present in order to prove sexual violence.

### **Medical evidence comprises of :**

- Trace **evidence** in the form of Semen, Spermatozoa, Blood, Hair, Cells, Dust, Paint, Grass, Lubricant, Fecal matter, Body fluids, Saliva.
- It could be **Injuries** either on the Body / Genitals
- It could also be sexually transmitted infection that the perpetrator has passed to the survivor in the form of HIV, Hepatitis, Gonorrhea and unwanted pregnancies.
- Forensic evidence is likely to be found only upto 96 hours after the incident. The extent of medical evidence found within 96 hours is subject to activities undertaken by the survivor in the form of bathing, urinating, gargling, defecating etc. A survivor may also not report rape immediately, and this delay in reporting can also lead to finding no forensic evidence. These activities must be recorded by the doctors to explain lack of medical evidence.

Ensuring gender sensitive medico legal examination and care – Due to the fact that the health worker is well versed with medico legal aspects of rape, she must ensure that no comments are made on the past sexual conduct of the survivor. She must ensure that unscientific aspects such as height, weight, status of hymen, old tears to the hymen, finger test results should not be made part of the documentation. This is because they are in complete contravention of the Section 114 of the Indian Evidence Act (IEA), 1872.

Clarification about per-vagina examination and finger test - Para medical workers should be aware of the differences between per-vaginal examination and 2-finger test. Per-vaginal examination is done with the purpose of identifying clinical causes underlying a specific medical condition. This is followed up with a treatment plan. A woman/girl may require such an examination depending upon the nature of sexual violence and whether she is experiencing bleeding, vaginal pain, discharge etc. after which treatment would be offered for these condition. Finger test in rape survivors is done to determine laxity of vaginal walls and habituation of a victim to sexual activity. A para medical worker can clarify this difference to the examining doctor. Even if per- vaginal examination is carried out for medical treatment, consent must be sought from woman/ girl in simple language.

Medical opinion - Sec 164 A (3) CrPC expects a health professional to prepare a report based on the examination conducted and conclusions arrived at. The health worker must be aware of the components of such a medical opinion provision and may provide guidance to the examining doctor to do so.

The health worker should be well versed with the protocol and guidelines drafted and circulated by the MOHFW in February 2014 (Ministry of Health and Family Welfare, Govt. of India) for medico legal care in sexual violence. The health worker must ensure that such examination and care be carried out in the spirit of the document. The health worker must also be prepared to assist the examining doctor with her concerns and doubts about the medico legal care of sexual violence survivors.

## Annexure I- Types of evidence to be collected in instances of Sexual violence

Please note that the annexure provides nature of medico legal evidence to be collected by the examining doctor when she receives a woman/ girl reporting sexual violence. The indication for the nature of evidence is based on the changes in the definition of rape as stated in CLA 2013 and POCSO 2012.

Table Indicative Of Type Of Evidence To Be Collected			
History of Sexual Violence	Type of swab	Purpose	Points to consider
<b>Peno-vaginal</b>	Vaginal swabs	- Semen/sperm detection -lubricant -DNA	-whether ejaculation occurred inside vagina or outside -use of condom
	Body swabs	-Semen/sperm detection -saliva (in case of sucking/licking)	-if ejaculation occurred outside
<b>Peno anal</b>	Anal swabs	-Semen/sperm detection -DNA -lubricant -faecal matter	-whether ejaculation occurred inside anus or outside -use of condom
	Body swabs	-Semen/sperm detection -saliva (in case of sucking/licking)	-if ejaculation occurred outside
<b>Peno oral</b>	Oral swabs	-Semen/sperm detection -DNA -saliva	-whether ejaculation occurred inside mouth or outside -use of condom
	Body swabs	-Semen/sperm detection -saliva (in case of sucking/licking)	-if ejaculation occurred outside
<b>Use of objects</b>	Swab of the orifice (anal, vaginal and/or oral)	Lubricant	Detection of lubricant used if any
<b>Use of body parts (fingering)</b>	Swab of the orifice (anal, vaginal and/ or oral)	Lubricant	
<b>Masturbation</b>	Swab of the orifice/ body part	-Semen/sperm detection -DNA -lubricant	-whether ejaculation occurred or not -if ejaculated in orifice or body parts

## **Annexure – II: MoH&FW ‘Guidelines & Protocols for Medico-legal Care of Victims/Survivors of Sexual Violence’**

### **Proforma for Medico legal Examination of Survivors of Sexual Violence issued by the MoHFW<sup>4</sup>**

The examining doctor should carefully read the Guidelines for responding to women affected by sexual violence issued by the MoHFW, and should be well aware of the comprehensive care to be provided.

1. **Informed consent:** Doctors shall inform the person being examined about the nature and purpose of examination and in case of child to the child’s parent/guardian/person in whom the child reposes trust. This information should include:

- a. The medico-legal examination is to assist the investigation, arrest and prosecution of those who committed the sexual offence. This may involve an examination of the mouth, breasts, vagina, anus and rectum.
- b. To assist investigation, forensic evidence may be collected with the consent of the women affected by violence. This may include removing and isolating clothing, scalp hair, foreign substances from the body, saliva, pubic hair, samples taken from the vagina, anus, rectum, mouth and collecting a blood sample.
- c. As per the law, the hospital/ examining doctor is required to inform the police about the sexual offence. However, if she does not wish to participate in the police investigation, it will not result in denial of treatment for sexual violence. Informed refusal will be documented in such cases.

2. Per vaginum examination, commonly referred to by lay persons as ‘two-finger test’, must not be conducted for establishing an incident of sexual violence and no comment on the size of vaginal introitus, elasticity of the vagina or hymen or about past sexual experience or habituation to sexual intercourse should be made as it has no bearing on a case of sexual violence. No comment on shape, size, and/or elasticity of the anal opening or about previous sexual experience or habituation to anal intercourse should be made.

3. **Injury documentation:** Examine the body parts for sexual violence related findings (such as injuries, bleeding, swelling, tenderness, discharge). This includes both micro mucosal injuries which may heal within short period to that of severe injuries which would take longer to heal. Please refer to section VI Point 17 of the Guidelines.

- a. Injuries must be recorded with details - size, site, shape, colour.
- b. If a past history of sexual violence is reported, then record relevant findings. Sexual violence is largely perpetrated against females, but it can also be perpetrated against males, transgender and intersex persons.

4. The nature of forensic evidence collected will be determined by three main factors- nature of sexual violence, time lapsed between incident of sexual violence and examination and whether she has bathed or washed herself. Please refer to Section VI Point 21 of Guidelines.

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<sup>4</sup><http://mohfw.nic.in/showfile.php?lid=2737>

5. **Opinion:** The issue of whether an incident of rape/sexual assault occurred is a legal issue and not a medical diagnosis. Consequently, doctors should not, on the basis of the medical examination conclude whether rape/sexual assault had occurred or not. Only findings in relation to medical findings should be recorded in the medical report.

- a. Drafting of provisional opinion should be done immediately after examination of her on the basis of history and findings of detailed clinical examination of her.
- b. It should be always kept in mind that normal examination findings neither refute nor confirm sexual violence. Hence circumstantial/other evidence may please be taken into consideration.
- c. Absence of injuries may be due to:
  - Inability of women affected by violence to offer resistance to the assailant because of intoxication or threats
  - Delay in reporting for examination



## Medico-legal Examination Report of Sexual violence

1. Name of the Hospital ..... OPD No..... Inpatient No.....
2. Name ..... D/o or S/o (where known).....
3. Address.....
4. Age (as reported) ..... Date of Birth (if known).....
5. Sex (M/F/Others) .....
6. Date and Time of arrival in the hospital .....
7. Date and Time of commencement of examination.....
8. Brought by..... (Name & signatures)
9. MLC No. .... Police Station.....
10. Whether conscious, oriented in time and place and person.....
11. Any physical/intellectual/psychosocial disability .....

(Interpreters or special educators will be needed where the women affected by violence has special needs such as hearing/speech disability, language barriers, intellectual or psychosocial disability)

### 12. Informed Consent/refusal

I.....D/o or S/o.....

hereby give my consent for:

- |  |  |
|--|--|
| a) medical examination for treatment                     | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| b) this medico legal examination                         | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| c) sample collection for clinical & forensic examination | Yes <input type="checkbox"/> No <input type="checkbox"/> |

I also understand that as per law the hospital is required to inform police and this has been explained to me.

I want the information to be revealed to the police Yes No ☐ ☐

I have understood the purpose and the procedure of the examination including the risk and benefit, explained to me by the examining doctor. My right to refuse the examination at any stage and the consequence of such refusal, including that my medical treatment will not be affected by my refusal, has also been explained and may be recorded. Contents of the above have been explained to me in ..... language with the help of a special

educator/interpreter/support person (circle as appropriate)

.....

If special educator/interpreter/support person has helped, then his/her name and signature.....

Name & signature of women affected by violence or parent/Guardian/person in whom the child reposes trust in case of child (<12 yrs)

.....

.....

.....

With date, time & place

Name & signature/thumb impression of Witness

.....

.....

.....

With Date, time and place

### 13. Marks of identification (Any scar/mole)

(1) .....

(2) .....



**Left Thumb impression**

### 14. Relevant Medical/Surgical history

### 15. A. History of Sexual Violence

(i)	Date of incident/s being reported	(ii)	Time of incident/s	(iii)	Location/s
(iv)	<b>Estimated duration : 1-7 days ..... 1 week to 2 months..... 2-6 months.....</b> <b>&gt;6 months.....</b> <b>Episode: One..... Multiple .....Chronic (&gt;6 months)</b> <b>.....Unknown.....</b>				
(v)	Number of Assailant(s) and name/s.....				
(vi)	Sex of assailant(s).....				

Approx .Age of assailant (s)..... (vii) If known to the women affected by violence – relationship with her.....
(viii) <b>Description of incident</b> in the words of the narrator: Narrator of the incident: women affected by violence /informant (specify name and relation to her) .....  (if this place is insufficient use extra page)

**15 B. Type of physical violence used if any (Describe):**

Hit with (Hand, fist, blunt object, sharp object)	Burned with
Biting	Kicking
Pinching	Pulling Hair
Violent shaking	Banging head
	Dragging
Any other:	

**15 C.**

- i. Emotional abuse or violence if any (insulting, cursing, belittling, terrorizing).....
- ii. Use of restraints if any .....
- iii. Used or threatened the use of weapon(s) or objects if any.....
- iv. Verbal threats (for example, threats of killing or hurting women affected by violence or any other person in whom she is interested; use of photographs for blackmailing, etc.) if any: .....
- v. Luring (sweets, chocolates, money, job) if any: .....
- vi. Any other:.....

**15 D.**

- i. Any H/O drug/alcohol intoxication:
- ii. Whether sleeping or unconscious at the time of the incident: .....

15 E. If women affected by violence has left any marks of injury on assailant/s, enter details:

.....

### 15 F. Details regarding sexual violence:

**Was penetration by penis, fingers or object or other body parts (Write Y=Yes, N=No, DNK=Don't know)**

**Mention and describe body part/s and/or object/s used for penetration.**

	Penetration			Emission of Semen		
Orifice of women affected by violence	By Penis	By body part of self or assailant or third party (finger, tongue or any other)	By Object	Yes	No	Don't know
Genitalia (Vagina and/or urethra)						
Anus						
Mouth						

Oral sex performed by assailant on women affected by violence	Y	N	DNK
Forced Masturbation of self by women affected by violence			
Masturbation of Assailant by women affected by violence Forced Manipulation of genitals of assailant by her	Y	N	DNK
Exhibitionism (perpetrator displaying genitals)	Y	N	DNK
Did ejaculation occur outside body orifice (vagina/anus/mouth/urethra)?	Y	N	DNK
If yes, describe where on the body			
Kissing, licking or sucking any part of survivor's body	Y	N	If Yes, describe-
Touching/Fondling	Y	N	If Yes, describe
Condom used*	Y	N	DNK
If yes status of condom	Untorn	Torn	DNK
Lubricant used*	Y	N	DNK
If yes, describe kind of lubricant used			
If object used, describe object:			
Any other forms of sexual violence			

**Explain what condom and lubricant is to the survivor**

Post incident has the survivor	Yes/No/Do Not know	Remarks
Changed clothes		
Changed undergarments		

Cleaned/washed clothes		
Cleaned/washed undergarments		
Bathed		
Douched		
Passed urine		
Passed stools		
Rinsing of mouth/Brushing/ Vomiting (Circle any or all as appropriate)		

Time since incident.....

H/o vaginal/anal/oral bleeding/discharge prior to the incident of sexual violence.....

H/o vaginal/anal/oral bleeding/discharge since the incident of sexual violence.....

H/o painful urination/ painful defecation/ fissures/ abdominal pain/pain in genitals or any other part since the incident of sexual violence

#### **16. General Physical Examination-**

- i. Is this the first examination.....
- ii. Pulse.....BP.....
- iii. Temp.....Resp. Rate.....
- iv. Pupils .....
- v. Any observation in terms of general physical well being of the survivor.....

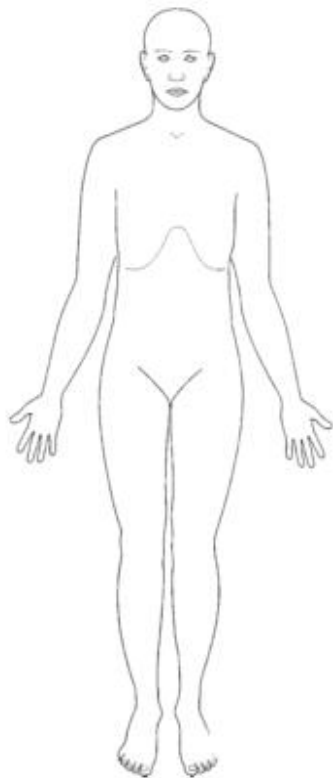
#### **17. Examination for injuries on the body if any**

**The pattern of injuries sustained during an incident of sexual violence may show considerable variation. This may range from complete absence of injuries (more frequently) to grievous injuries (very rare).**

(Look for bruises, physical torture injuries, nail abrasions, teeth bite marks, cuts, lacerations, fracture, tenderness, any other injury, boils, lesions, discharge specially on the scalp, face, neck, shoulders, breast, wrists, forearms, medial aspect of upper arms, thighs and buttocks) Note the Injury type, site, size, shape, colour, swelling signs of healing simple/grievous, dimensions.)

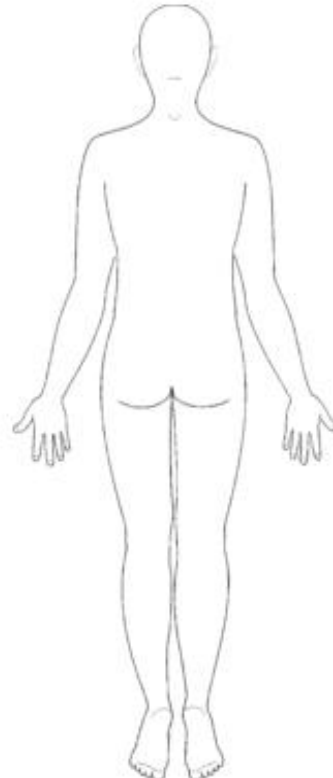
Scalp examination for areas of tenderness (if hair pulled out/dragged by hair)	
Facial bone injury: orbital blackening, tenderness	
Petechial haemorrhage in eyes and other places	
Lips and Buccal Mucosa / Gums	
Behind the ears	
Ear drum	
Neck, Shoulders and Breast	
Upper limb	
Inner aspect of upper arms	
Inner aspect of thighs	
Lower limb	
Buttocks	
Other, please specify	

Right

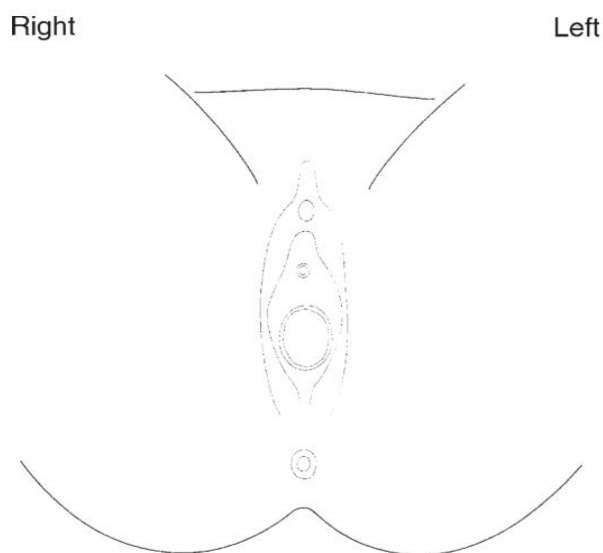


Left

Left



Right



### 18. Local examination of genital parts/other orifices\*:

**A. External Genitalia:** Record findings and state NA where not applicable.

Body parts to be examined	Findings
Urethral meatus & vestibule	
Labia majora	
Labia minora	
Fourchette & Introitus	
Hymen	
Perineum	
External Urethral Meatus	
Any Other	

**\* Per/Vaginum /Per Speculum examination should not be done unless required for detection of injuries or for medical treatment.**

P/S findings if performed .....

P/V findings if performed .....

Record reasons if P/V of P/S examination performed .....

### **C. Anus and Rectum** (encircle the relevant)

Bleeding/ tear/ discharge/ oedema/ tenderness

### **D. Oral Cavity** - (encircle the relevant)

Bleeding/ discharge/ tear/oedema/ tenderness

### 19. Systemic examination:

**Central Nervous System:** .....

**Cardio Vascular System:** .....

**Respiratory System:** .....

**Chest:** .....

**Abdomen:** .....

**20. Sample collection/investigations for hospital laboratory/ Clinical laboratory**

- 1) Blood for HIV, VDRL, HbsAg
- 2) Urine test for Pregnancy/
- 3) Ultrasound for pregnancy/internal injury
- 4) X-ray for Injury

**21. Samples Collection for Central/ State Forensic Science Laboratory**

**(1) Debris collection paper**

**(2) Clothing evidence where available** – (to be packed in separate paper bags after air drying)

<b>List and Details of clothing worn by the survivor at time of incident of sexual violence</b>
---

**(3) Body evidence samples as appropriate** (duly labeled and packed separately)

	Collected/Not Collected	Reason for not collecting
Swabs from Stains on the body (blood, semen, foreign material, others)		
Scalp hair (10-15 strands)		
Head hair combing		
Nail scrapings (both hands separately)		
Nail clippings (both hands separately)		
Oral swab		
Blood for grouping, testing drug/alcohol intoxication (plain vial)		
Blood for alcohol levels (Sodium fluoride vial)		
Blood for DNA analysis		



(EDTA vial)		
Urine (drug testing)		
Any other (tampon/sanitary napkin/condom/object)		

**(4) Genital and Anal evidence** (Each sample to be packed, sealed, and labelled separately-to be placed in a bag)

\* Swab sticks for collecting samples should be moistened with distilled water provided.

	Collected/Not	Reason for not collecting
Matted pubic hair		
Pubic hair combing (mention if shaved)		
Cutting of pubic hair (mention if shaved)		
Two Vulval swabs (for semen examination and DNA testing)		
Two Vaginal swabs (for semen examination and DNA testing)		
Two Anal swabs (for semen examination and DNA testing)		
Vaginal smear (air-dried) for semen examination		
Vaginal washing		
Urethral swab		

*\*Samples to be preserved as directed till handed over to police along with duly attested sample seal.*

## 22. Provisional Medical Opinion

I have examined (name of survivor) \_\_\_\_\_ M/F/Other \_\_\_\_\_ aged \_\_\_\_\_ reporting\_ (type of sexual violence and circumstances) \_\_\_\_\_, XYZ days/hours after the incident, after having (bathed/douched etc) \_\_\_\_\_. My findings are as follows:

- Samples collected (for FSL), awaiting reports
- Samples collected (for hospital laboratory)
- Clinical findings
- Additional observations (if any)

**23. Treatment prescribed:**

Treatment	Yes	No	Type and comments
STI prevention treatment			
Emergency contraception			
Wound treatment			
Tetanus prophylaxis			
Hepatitis B vaccination			
Post exposure prophylaxis for HIV			
Counselling			
Other			

**24. Date and time of completion of examination**

This report contains ..... number of sheets and .....number of envelopes.

Signature of Examining Doctor

Name of Examining Doctor

Place:

Seal

**25. Final Opinion** (After receiving Lab reports)

**Findings in support of the above opinion,** taking into account the history , clinical examination findings and Laboratory reports of ..... bearing identification marks described above, ..... hours/ days after the incident of sexual violence, I am of the opinion that:

Signature of Examining Doctor

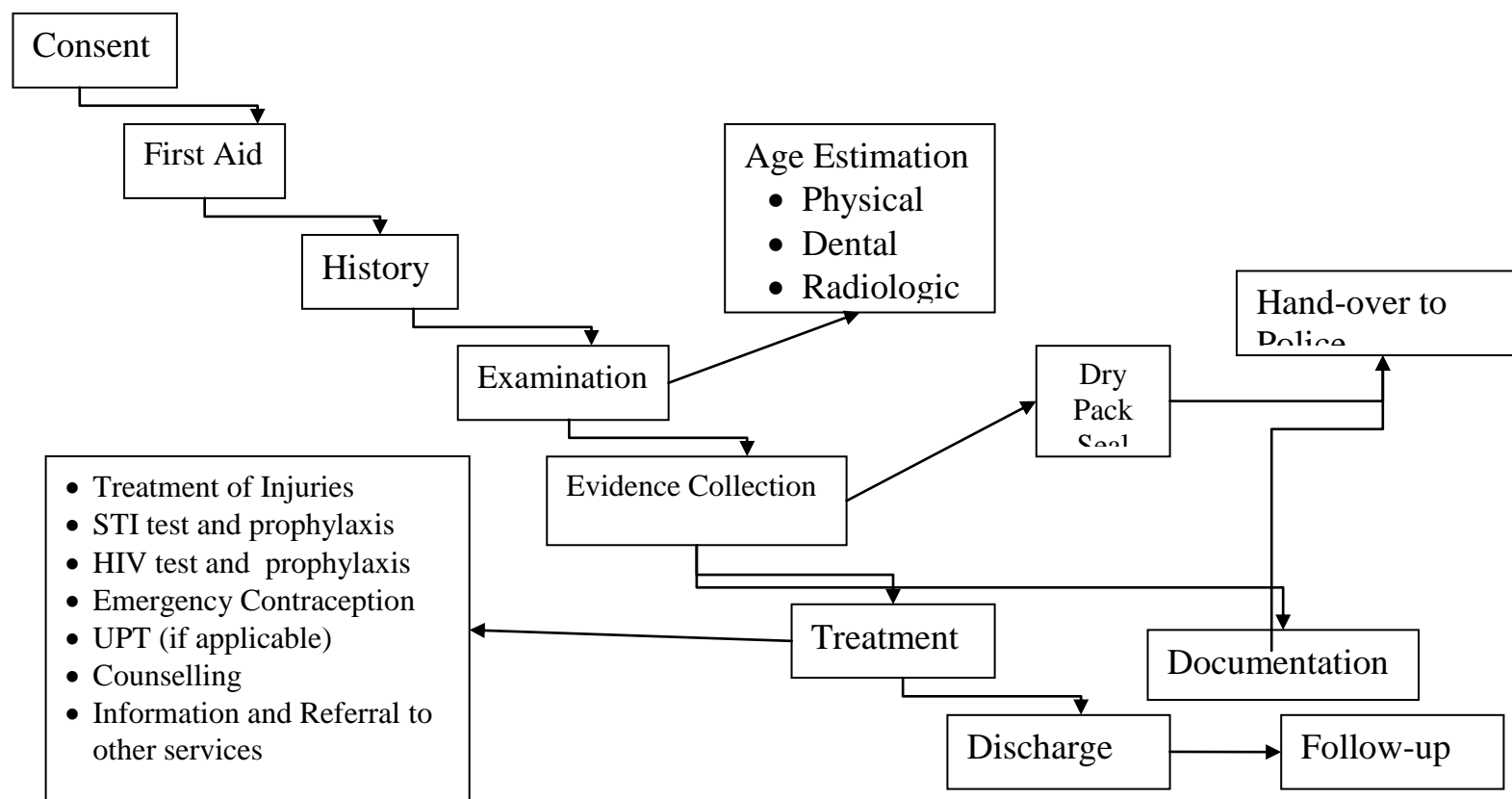
Name of Examining Doctor

Place:

Seal

**COPY OF THE ENTIRE MEDICAL REPORT MUST BE GIVEN TO THE SURVIVOR FREE OF COST IMMEDIATELY**

The following are the components of a comprehensive health care response to sexual violence and must be carried out in all cases:



# Standard Operating Procedure for Police Facilitation Officer

## INTRODUCTION TO SOP

A Police Facilitation Officer is a Police Officer deployed from amongst serving cadre/retired preferably a woman police officer at the Sub-Inspector level, with experience of working for at least 5 years. She/he will be qualified as per the requirements of the Ministry of Home Affairs for police personnel at the SI rank.

Given the extensive functions envisaged under the Scheme, it is suggested that the PFO is appointed/deputed from the serving cadre.

This Standard Operating Procedure ('SoP') for Police Facilitation Officer is meant for use when responding to cases of violence against women that reach the One Stop Centres (OSC). Under the Scheme, the Police Facilitation Officer (PFO) is envisaged as the link between the aggrieved woman/survivor and the jurisdictional police station/the Investigation Officer (IO). Additionally, the PFO is also required to act as a liaison between the OSC and the police.

The SoP recognizes that PFOs are likely to be already familiar with the existing procedures under the Code of Criminal Procedure, 1973 (CrPC) as also the relevant Police Rules. However, in view of the fact that as part of the core OSC team, they are likely to be one of the first points of contact for the aggrieved woman/survivor(s) with the CJS, this specific SoP focuses on an aggrieved woman centered approach.

## GUIDING PRINCIPLES<sup>5</sup>

- ***The interest, well-being and safety of the aggrieved woman/survivor is supreme and this should guide all actions of the PFO.***

The law has laid down several enabling provisions to ensure that the physical and emotional well-being of the aggrieved woman/survivor is upheld. This includes provisions such as taking the statement of the aggrieved woman/survivor at her residence or audio-video recording to name a few. The PFO should ensure that should it be required, these provisions be made available to the aggrieved woman/survivor.

Safety of the aggrieved woman/survivor is of paramount consideration and the PFO along with the OSC case worker must ensure that a proper safety assessment is made and safety plan prepared. Recording the statement at the OSCC must be offered as option to the aggrieved

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<sup>5</sup> Reference has been made to the *Standard Operating Procedure for Investigation of Rape and Other Sexual Assault*; Metropolitan Police Service; London; Sourced from: <  
<https://www.whatdotheyknow.com/request/29563/response/98037/attach/4/Redacted%20Sapphire%20SOP.pdf>>

woman and if she chooses then a private space should be made available for recording of FIR at the OSC.

- *The PFO should ensure that the aggrieved woman/survivor is provided the highest standard of care and support at the beginning, during, and post completion of the investigation and evidence collection, regardless of her intention or ability to support the prosecution.*
- *The PFO should be educated about the effect of trauma on an individual and the aggrieved woman/survivor should be handled with consideration, professionalism, and sensitivity.*

Care should be taken by the PFO to ensure that no embarrassing, insensitive or disturbing questions are put to survivor during the initial interview, FIR registration, and statement recording. Survivor should not be made to repeat the history of abuse again and again. Care should also be taken to ensure that questions about her character (including past sexual behavior), sexuality, sexual orientation, other habits such as drinking/ smoking, staying out late at night etc. should not be asked. These questions are unnecessary and insensitive, and increase the survivor's trauma. Her privacy and confidentiality should be respected and maintained at all times.

- *The PFO should be mindful of the inequality of power between the aggrieved woman/survivor and the perpetrator, and respond to the needs and situations accordingly.*
- *The PFO should ensure timely coordination and information sharing*

As the liaison between the OSC and other CJS agencies and in view of her/his experience as a police officer, the PFO is in the best position to maintain effective and timely coordination with functionaries of the OSC and other relevant agencies such as jurisdictional police station, public prosecutors, legal aid lawyers/para-legals, shelter homes etc. The PFO should also facilitate information sharing with the aggrieved woman/survivor and her family regarding the registration of FIR, status of the investigation and the trial proceeding.

### **ROLE OF THE POLICE FACILITATION OFFICER (PFO)**

The role of a PFO can be divided into three phases, based on the intensity of the response required:

**Phase I:** Information and support in FIR/Complaint registration

**Phase II:** Support in safety assessment

**Phase III:** Continuing liaison with IO/Police

**Phase IV:** Enforcement of Judicial Order

### ***Phase I: Immediate response and hand-holding***

- On referral from the Centre Administrator or case worker of the OSC, the PFO should inform the aggrieved woman/survivor in detail of the relevant police procedures for registration of FIR under the Indian Penal Code/Domestic Incident Report (DIR) under the PWDVA, 2005, as the case may be.
- In case the aggrieved woman/survivor has not already been briefed about the legal options available to her (which is to be done by the case worker/OSC lawyer), the PFO should also inform her of the same.
- The PFO should immediately contact the jurisdictional police station and facilitate the registration of FIR, at the police station.

**Please Note:** The SHO of the relevant police station and the SP would have already received intimation via a text message, the moment a complaint is formally registered at the OSC and a UID generated.

**Also Note:** At the time of registration of FIR, if it becomes apparent that the crime was committed outside the jurisdiction of that police station, the police should register a ‘Zero FIR’ and transfer the FIR to the concerned police station (*Ministry of Home Affairs; Advisory on Comprehensive Approach towards Crimes against Women; 15011/22/2015 – SC/ST – W, 12<sup>th</sup> May 2015*). The issue of jurisdiction must NOT prevent the registration of FIR. The MHA Advisory of May 2015 is annexed as **Annexure – II**.

#### **Special procedures for differently-abled complainant**

Where the survivor of a sexual offence is temporarily or permanently differently-abled, either physically or mentally, the FIR is to be recorded at her residence by the police officer. Alternately, the recording can also be done at a convenient place of the survivor’s choice.

An interpreter or special educator’s presence during recording of the FIR is provided for under Section 154(a) of the CrPC.

The recording shall be videographed as per Section 154(b) of the CrPC. Under Section 154(c) of the CrPC, the police is also duty bound to get the survivor’s statement recorded by a Judicial Magistrate under Section 164 at the earliest possibility.

*Source: Lawyers Collective; Locating the Survivor within the Criminal Justice System; 2014*

- Thus, in case the aggrieved woman/survivor is differently-abled, the PFO should facilitate registration of FIR at the OSC itself, if she/guardian so chooses. Since the OSC

is equipped with video-conferencing facility, this would address the requirement as per Section 154(b) of CrPC.

- Where the VAW complained of is in relation to Sections 326A, 326B, 354, 354B, 370, 370A, 376, 376A-376E, or 509 of the IPC and the police refuse to or delay in recording the FIR, the PFO should inform the aggrieved woman/survivor of her right and facilitate the filing of a criminal complaint under Section 166A of the IPC against such police officers.
- In cases where the FIR has already been registered and the aggrieved woman/survivor has been referred to the OSC by the jurisdictional police station or has approached the OSC on her own, the PFO shall check to ensure that copies of the FIR have been made available to the aggrieved woman/survivor.

**Please Note:** In a case of domestic violence, even where the aggrieved woman/survivor wants to proceed under the PWDV Act or is not sure about her next steps, the police should make a record in the Daily Diary.

### **Special Procedure under POCSO**

**Please Note:** In case the child is in need of care and protection, the Child Welfare Committee must be activated; Childline will be contacted through 1098 for taking further care.

**Important Provisions:** Section 19 of the POCSO Act imposes the responsibility of recording reported information upon both the police and the special juvenile police unit (SJPU), to enable them to proceed in accordance with law and take urgent action including the extension of care and protection to a child.

The information under section 19 of the Act may be given by any person; even by a person other than the child.

Non-recording of report under Section 19 is a penal, non-cognizable offence under section 21 of the Act.

**Please Note:** This parallel obligation cannot be used as a justification for the police to direct the informant to the special juvenile police unit or vice-versa. In case the local police station is refusing to record the report under POCSO Act and have referred the child victim to the SJPU, the PFO should remind the police of its obligation under the law and insist upon such recording.

The record under section 19 can be the basis of further police action including registration of FIR under section 154 of the CrPC. The information recorded under section 19 is not automatically an FIR.

- In Domestic Violence Cases: In case the aggrieved woman/survivor reports domestic violence and does not wish to proceed under Section 498A or any other relevant provision of the IPC (once she has been informed of her legal options at the OSC) and instead, wants to seek civil reliefs under the PWDVA, 2005, the PFO should refer her to the relevant Protection Officer. However, as mentioned above, police have the duty to make an entry/record in the Daily Diary or register a Non-Cognizable Report (NCR), as the case may be.
- In instances where women want to file a complaint under Section 498A IPC, the police is likely to call for a joint meeting. PFO should be aware that caution must be exercised while conducting such meetings. When such meetings are conducted documentation about the proceedings of the meeting should be shared with the aggrieved / survivor of violence.

***Phase II: Support in safety assessment and statement recording***

- Safety Assessment and Planning: The PFO will support the case worker to make a detailed safety assessment and safety plan, based on the statement made by the aggrieved woman/survivor and her family. The safety assessment should take into account immediate, medium-term and long-term risks and safety needs of the aggrieved woman/survivor. The Safety Assessment Check list as provided on page 19 could be viewed in this regard.
- To implement the safety plan, during the stage of investigation and before the trial begins, the PFO should liaise with the IO and keep him informed of all developments. Factors such as proximity of the accused person's home/workplace, risks inherent in the aggrieved woman/survivor's daily routine, accessibility of her home/neighborhood etc. should be taken into account. Significant risks are attached in cases where the aggrieved woman/survivor and/or her family has received prior threats in connection with the case or where the accused has obtained bail.
- **Ensure recording of survivor's statement under Sections 161 and 164 CrPC in the prescribed manner**

The PFO will, in coordination with the OSC Lawyer, facilitate the recording of the Sections 161 and 164A CrPC statements, including by audio-video means. **Please note:** The OSC is equipped with video-conferencing facility and this should be used by the PFO for recording the statements. As per Sections 157 and 161 of the CrPC, statement of a rape survivor can be recorded only by a woman officer. The PFO being a woman police officer, and thus, can facilitate such recording.

The PFO should ensure that the statement under Section 161 CrPC be taken in phases allowing the survivor to fully recall the incident. Further, where the survivor misses out details, the PFO should advise the victim/survivor and her representatives that such



details can still be included in the statement she makes before the Magistrate under Section 164 CrPC. Additionally, all the information given in the statement under Section 161 must be included in her statement under Section 164 so as to ensure that there is no discrepancy. Such discrepancies can create a problem for the prosecution case during the trial, and should be avoided at all cost.

For offences under sections 354, 354A, 354B, 354C, 354D, 376(1), 376(2), 376A, 376B, 376C, 376D, 376E, 509 of IPC, the victim/survivor's statement shall be recorded by the Magistrate, as soon as the commission of the offence is brought to the notice of the police as per Section 164(5A)(a) CrPC.

- **For Differently-abled victim/survivor**

Where the victim/survivor is temporarily or permanently mentally or physically differently-abled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement, as per proviso to Section 164 (5A) CrPC. Recording of such survivor's statement shall be videographed. **Please note:** The PFO should, in coordination with the OSC Lawyer, utilize the video-conferencing facility available at the OSC for this purpose.

The statement of a differently-abled woman survivor shall be considered to be statement in lieu of examination-in-chief [section 164 (5A) (b) CrPC]. Such statement will suffice as examination-in-chief as under Section 137 of the Indian Evidence Act, 1872. Thus, the woman survivor can be cross-examined on the basis of such statement.

### ***Phase III: Continuing liaison***

- **The PFO should provide necessary support and liaise with the police/IO to ensure that the aggrieved woman/survivor is kept informed and is safe, before and after investigation is complete.**

The PFO's primary role ends with FIR/complaint registration and immediate support provided at the OSC. However, this does not mean that her/his role is completely exhausted. Liaising with the IO may be required during the life of the case, particularly given her/his experience as a police officer. As and when necessary, the PFO may also be required to coordinate with the survivor's lawyer, during the trial proceedings.

### ***Phase IV: Enforcement of Judicial Order***

- The PFO should assist in the enforcement of the order passed by the Court, particularly in cases under the PWDV Act as well as other civil suits/applications. [Please see the Introduction to the SoPs for details of enforcement methods available].

- The PFO should specifically ensure that the aggrieved woman/survivor is not further harassed. This includes ensuring her and her dependant(s) safety as per the judicial order, retrieving stridhan and/or other assets, enforcing an order for temporary/permanent custody of children, to name a few.

## **Annexure – I: Monitoring Indicators for Functioning of Police Facilitation Officer**

- **Knowledge of relevant laws and procedures,** including Police Rules and practice directions.
- **Interaction with the aggrieved woman/survivor:** Whether displays sensitivity, courteousness, and facilitates completion of relevant procedural requirements, in a timely manner.
- **Liaising with Police:** Whether the PFO has the details of all police stations/SJPUs/POs and was able to identify the relevant/jurisdictional police station/SJPU/PO.
- **Registration of FIR/complaint:** Whether PFO personally communicates with the relevant police station/SJPU to ensure registration of FIR/complaint; what is the time taken by the PFO to contact the relevant police station/SJPU; what is the follow-up action taken by the PFO to ensure registration of FIR/complaint where the aggrieved woman/survivor complains of police reluctance.
- **Supporting safety assessment and planning:** Whether provides proactive support to the case worker to undertake safety assessment & planning; whether is available in a timely manner and considers this as an essential part of her/his functions; whether has adequate understanding of the safety risks that an aggrieved woman/survivor (including vulnerable groups such as children, differently abled women/children, women/children living with HIV/AIDS) may face; whether she/he is familiar with the local CJS structure and practice so as to provide inputs into the safety planning.
- **Coordination with OSC personnel, the Police and other relevant Functionaries:** Whether provides support to the other OSC personnel such as case worker, OSC lawyer and medical personnel in a timely manner; whether ensures maintains effective and regular relationship with police/SJPU; whether coordinates in a timely manner with other functionaries such as aggrieved woman/survivor's lawyer or Public Prosecutor to ensure follow-up, as and when required.

## **Annexure – II: Ministry of Home Affairs Advisory on Comprehensive Approach towards Crimes against Women**

15011/22/2015 – SC/ST – W

GOVERNMENT OF INDIA

Ministry of Home Affairs

(CENTRE-STATES DIVISION)

\*\*\*\*\*

New Delhi, the 12<sup>th</sup> May, 2015

To

- 1) Chief Secretaries of all State Governments including GNCTD
- 2) Administrators of DD, DNH, A&N, Lakshadweep

**Sub.: Advisory on comprehensive approach towards crimes against women**

Sir/Madam,

The Ministry of Home Affairs has been issuing advisories from time to time with a view to help the States/UTs to evolve a comprehensive criminal justice system, especially with regard to crimes against women. These advisories primarily enumerate the action points arising out of different directives issued by various constitutional authorities. However, with the passage of time, it has been felt that a holistic approach is needed to deal with situations prevailing on the ground more effectively. With this in view, it has been considered appropriate to suggest the following affirmative measures that the States/UTs may take immediately to reinforce their criminal justice system:

### **(A) REGISTRATION OF CRIMES AGAINST WOMEN**

- (i) All out measures need to be taken to encourage registration of crimes by the citizens.
- (ii) It must be ensured that the complainant / good Samaritan / Citizen must not face any harassment from any State / Public / Private agency on account of helping the women in distress
- (iii) The Police shall register an FIR upon receipt of information of the commission of a cognizable offence. If at the time of registration of FIR, it becomes apparent that the crime was committed outside the jurisdiction of the Police

station, the Police should be appropriately instructed to register 'Zero FIR' and ensure that the FIR is transferred to the concerned Police station u/s 170 of the Cr. P.C.

- (iv) Through the Criminal Law Amendment Act 2013, Section 166A of the IPC has been inserted, which states that if the Public Servant fails to record any information given to him under sub-section (1) of the Section 154 of the Code of Criminal Procedure 1973 (2 of 1974), in relation to cognizable offence punishable under Section 326A, Section 326B, Section 354, Section 354B, Section 370, Section 370A, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine. Extensive training programme especially to law enforcement personnel needs to be undertaken to raise awareness and sensitivity to this punitive legal provision.

**(B) INCREASING REPRESENTATION OF WOMEN IN POLICE**

The Ministry of Home Affairs had issued an advisory on 22<sup>nd</sup> April 2013 and another on 26<sup>th</sup> August, 2014 whereby the States / UTs were requested to raise the women representation in Police to 33%. However, it is a matter of concern that not much has been done in this regard, except for a few States. The Government of India has now approved reservation of 33% for women horizontally and in each category (SC, ST, OBC and others) in direct recruitment in non-Gazetted posts from Constable to Sub-Inspector in the Police forces of all the Union Territories including Delhi police and directed all the Union Territory Administrations to make enabling provisions in the relevant Recruitment Rules. The States are requested to take similar steps to increase women's representation in the Police Force.

**(C) SOME WOMEN SPECIFIC MEASURES THAT NEED TO BE ADOPTED**

- (i) Increase the no. of beat constables, especially on crime-sensitive roads;
- (ii) Increase the number of police help booths/kiosks, especially in remote and lonely stretches;
- (iii) Increase police patrolling, especially during the night;

- (iv) Increase the number of women police officers in the mobile police vans;
- (v) Increase public telephone booths for easy access to police;
- (vi) Proper lighting of roads, streets and other lonely stretches;
- (vii) Intensive patrolling in the affected areas, especially in the locality of the weaker sections. Periodic visits by senior officers including the DM & SP will create a sense of safety and security among the people;
- (viii) The sensitive routes taken by women employees during night shifts may be identified and patrolled;
- (ix) Proper verification of drivers / conductors of public vehicles to filter out criminal elements;
- (x) General Public / NGOs may be encouraged to participate in matters of women security;
- (xi) Self defence Training for women may be encouraged by Police.

**(D) INCREASING GENDER SENSITIVITY IN POLICE**

- (i) Training programmes on gender sensitization for all levels of police personnel must be organized at regular intervals.
- (ii) Mention of gender sensitivity in the Annual Performance Appraisal Report (APAR) should be included to ascertain the conduct of police personnel.
- (iii) Attitude of police personnel towards women should be considered for their posting or promotions.
- (iv) A gender-sensitivity index may be developed and applied appropriately while taking decisions on posting of police officers in the field
- (v) Specific observations about gender-related measures should be included in the inspection notes of Police Stations.
- (vi) Strict action should be taken against police personnel, who exhibit discourtesy or bias against women or neglect their supervisory responsibilities in this regard.



**(E) STRENGTHENING OF INVESTIGATIVE APPARATUS ON CRIMES AGAINST WOMEN**

There is an urgent need for specialized investigative apparatus on crimes against women. The Criminal Law (Amendment) Act 2013 has several provisions which are to be exclusively handled by women police personnel in case of crimes against women. This has necessitated setting up of specialized investigative units on crimes against women.

**(F) MAINTAINING DATABASE OF CRIMINALS HAVING HISTORY OF SEXUAL CRIMES**

The Delhi Police is maintaining the record of criminals involved in rape, molestations and eve-teasing in Delhi. The States are requested to maintain similar databases on criminals having history of sexual crimes to aid the investigation and verification. The States should immediately implement the Crime and Criminal Tracking Network System (CCTNS) project, which has a module on database of offenders.

**(G) ADHERENCE TO NEWLY ENACTED LEGISLATIONS AND HON'BLE SUPREME COURT'S GUIDELINES**

It is alleged that even after enactment of crimes against women specific legislation i.e. Criminal Law (Amendment) Act 2013; cases are not being registered under appropriate sections of IPC leading to suppression of heinous crimes and misrepresentation in crime data. Proper sensitization of lower level functionaries is needed to make optimum use of existing legislations.

It has also been observed that even after the order of the Hon'ble Supreme Court, in some cases the compensation paid to the victims of acid attacks is less than Rs. 3.00 lakh. Similarly, the direction for mandatory registration of FIR in case of missing children is also reported to be violated in some cases. These deficiencies need to be rectified immediately to avoid contempt of court proceedings.

●(H)

#### **SPEEDY TRIAL OF CASES**

The success of criminal justice system rests on swift trial and conviction. However, unfortunately the data of National Crime Records Bureau (NCRB) from 2011-13; reveal that even after investigation was completed in 60% (approx) of the cases, only in 16% (approx) cases, trials are completed and out of which only about 4% are convicted in cases of rape. A similar pattern is noticed in other types of crimes also. This is a matter of serious concern as it is severely eroding the deterrent value of punishment and emboldening the potential offenders. Hence the States are requested to expedite setting up of Fast Track Courts and strengthen the prosecution wing to conclude the trial speedily in cases of crimes against women.

This issue was also incorporated in the Criminal Law (Amendment) Act 2013 through amendments in Section 309 of Cr. P.C., wherein it was suggested that *when the inquiry or trial relates to an offence under Section 376, 376A-D of the Indian Penal Code (IPC), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.*

(I)

#### **LACK OF FORENSIC LABORATORIES**

The lack of quality forensic facilities for aiding the investigation is also a matter of serious concern. As per inputs received from Police and other investigating agencies, the inadequacy of Forensic Laboratories is a major detriment in making a watertight case. Most of the time, the pendency of cases in Forensic Laboratories and availability of expert forensic help are major bottlenecks. The States are requested to expedite setting up of new Forensic Laboratories in adequate numbers to aid speedy investigation

(J)

#### **SOCIAL CONNOTATION OF CRIMES AGAINST WOMEN**

From the National Crime Records Bureau (NCRB), Annual Report 2013, it is revealed that around **94.3% of rape cases are committed by people known to them.** Evidently, this has some serious social connotations as it points out a deep rooted social malady. The Universities should be encouraged to



undertake research on the causes of such criminal psyche and possible solutions besides deterrent punishment through legal trial.

**(K) CREATION OF CYBER-CELL TO TACKLE CYBER CRIMES**

It has also been observed that cases of various forms of cyber-crimes involving women and children are on the rise. In a recent case, Prajwala vs. UoI, it has been observed that illegal pornographic videos were being freely circulated on internet and social media sites without being noticed by any authority. These types of incidents need serious consideration and internet contents must be checked periodically; and any complaint received in this regard must be acted upon expeditiously. In this endeavor, specialized cyber-crime cells need to be set up.

As per the Constitution of India, the primary responsibility of providing safety, security to the citizens of India lies with the States. A comprehensive and holistic approach needs to be developed to tackle crimes against women in all its forms. The 'Police' is a State subject and hence it is the duty of State Government to modernize the police with respect to societal aspirations, sensitivity, gender and operational needs. The Government of India has already greatly enhanced the State's share of central taxes from 32% to 42%. In view of the same, the States are requested to take immediate and effective measures as enumerated above to contain the rising incidents of crimes against women.

Yours faithfully,

(Kumar Arun)

**Joint Secretary (Centre-State)**

**Telefax: 011-23438100**

**E mail: [jscs@nic.in](mailto:jscs@nic.in)**

**Copy also for information and necessary action to:**

- 1) ACS/Principal Secretary/Secretary (Home) of all States and UTs
- 2) The Director Generals of Police of all States and IGs of all UTs

# STANDARD OPERATING PROCEDURE FOR OSC LAWYER<sup>6</sup>

## INTRODUCTION TO SOP

One Stop Centers have been envisaged as spaces where women affected by violence, both in the public and private sphere, can receive support and redressal in the form of integrated services from various stakeholders. Legal aid and counseling provided by the lawyer is one such crucial service.

An OSC Lawyer (referred to as Para Legal Personnel/Lawyer) is a lawyer as may be deputed from District/State Legal Services Authority with experience in VAW issues OR any practicing Lawyer with at least 2 years' experience of litigation in the trial court.

Keeping in mind the functions to be performed by the Lawyer, which requires a certain minimum level of legal knowledge, it is suggested that trained Lawyers are deputed/assigned this role in the OSC.

The objective of the SoP is to equip OSC lawyers with guidance on ethical and rights-based litigation on VAW issues so as to ensure highest quality legal services to aggrieved women/survivors. These standards are based on the understanding that women facing violence encounter familial, social, and systemic barriers that prevent their access to the justice system. Hence, at the minimum, the legal system must attempt to reduce the conditions for their re-victimization by providing high quality and effective legal services so as to facilitate full access to justice.

Lawyers at the OSC have an important role to play in both the pre-FIR/complaint and post-FIR/complaint phases. It is important to ensure continuity of legal assistance. The lawyer supporting the aggrieved woman/survivor at the time of filing of the case should be interacting with the aggrieved woman/survivor throughout till the conclusion of the case.

## GUIDING PRINCIPLES

- 1. Must understand the dynamics of the form of violence the aggrieved woman/survivor has faced and the risks associated.*

The legal aid lawyer must recognize the potential risk of escalated violence due to litigation, and how the experience of domestic violence/sexual assault may affect the client-lawyer relationship. This would enable the lawyer to be in a better position to manage the process of establishing rapport with and gathering information, evidence and case direction from the survivor.

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<sup>6</sup> Also include SoPs for Prosecutors annexed at Annexure II

Moreover, in high risk cases, such as where the aggrieved woman/survivor has mental health issues or is vulnerable to drug abuse or is living with HIV/AIDS, the lawyer would be in a position to assess and plan the services/support required, in consultation with aggrieved women.

***2. Must be sensitive and non-judgmental towards the aggrieved woman/survivor, and allow her to set the pace of the interaction.***

The lawyer must be sensitive and non-judgmental in the attitude and language that is used to interact with the aggrieved woman/survivor. It is also important to allow her to take time and narrate the details. She may need more than one interaction to relate the entire incident and the relevant details. Moreover, often, a survivor of sexual assault or domestic violence may be too traumatised to narrate the details or take decisions as to the legal proceedings e.g. what reliefs to ask for in a PWDVA proceeding. The lawyer should be patient and in appropriate cases, refer her to the OSC case worker or any other professional counsellor.

She/he must respect the choices the aggrieved woman/survivor makes, not only at the beginning by choosing her legal option, but throughout the course of the proceedings. For instance, it is common for survivors of domestic violence to return to the perpetrators, even after multiple separations. Often a survivor will leave numerous times before finding the social, economic and emotional resources to take the legal recourse. The lawyer should remain nonjudgmental toward survivors who reunite with their perpetrators and should assure them that should they decide to leave in the future, resources will be available to help them. The lawyer must attempt to put the aggrieved woman/survivor at ease, ensure complete confidentiality and privacy and encourage her to share relevant details of the abuse. The lawyer must remember that the ultimate choice of action rests with the aggrieved woman, and must support the woman in her choice

***3. Must always keep the best interests of the aggrieved woman/survivor in mind***

In every interaction with the aggrieved woman, the lawyer must always keep the best interests of the aggrieved woman/survivor in mind. The lawyer must disclose conflict of interest, if any, and must not knowingly prejudice the survivor's interests. The lawyer must at all times act with integrity, good faith and honesty. While trying the case, the lawyer should advocate for survivor's exemption from court hearings.

***4. Must have competent knowledge of the relevant laws, procedures and practices.***

This includes knowledge of the statutes, general procedures (CrPC and CPC), procedures specific to the Court (High Court & District Court Rules), evidentiary standards (Indian Evidence Act and statute-specific evidentiary standards) and practices (Practice Directions issued by Courts, Police, Legal Services Authority and other relevant agencies that are likely

to impact the legal proceedings). For instance, if the Legal Aid Lawyer is representing the survivor in a prosecution under Section 376 IPC, she/he must be aware of the police practice related to taking the survivor for medical examination; she/he must also be familiar with the Ministry of Health & Family Welfare 'Guidelines & Protocols for Medico-Legal Examination of Rape Survivor' (2014).

- 5. Must file all applications and documents in a timely manner so as to avoid delays and make sure the case is not prejudiced; research the legal issues thoroughly, including the relevant issues that may arise such as custody of children and personal matrimonial and property issues; and prepare thoroughly for examination and cross-examination.***

In the criminal prosecution, the survivor's lawyer should assist the Prosecutor with legal research on relevant issues, and also brief/advice her about motions for production of documents or witnesses that may have not been covered by the Prosecutor.

The lawyer should strive to obtain the best evidence possible. Often, there may not be any direct witnesses to the violence other than the aggrieved woman and she may be hesitant to testify. Therefore, when formulating strategies for gathering evidence, the lawyer must be creative and choose witnesses the court is most likely to find credible. For instance, getting independent witnesses such as colleagues, neighbours etc. as well as professional experts may be most useful.

- 6. Must provide regular feedback and updates into the OSC MIS in addition to the line supervisor(s) within the Legal Services Authority***

The importance of following up and understanding the progress of an individual case from its initiation to its conclusion cannot be overestimated. Once the immediate handholding process and registration of complaint is complete, the aggrieved woman/survivor's role to ensure successful and victim-centered pursuit of the case becomes crucial. Hence, the lawyer must provide regular feedback and updates as to the status of the case, not only to her/his line supervisor within the LSA but also to the Management Information System (MIS) developed for the OSC.

- 7. Must coordinate with the relevant agencies/actors on a regular basis, particularly with the Public Prosecutor in a case under the IPC or POCSO.***

In a criminal proceeding under Section 376 IPC or other allied provisions, the lawyer is to assist the Public Prosecutor or the Special Public Prosecutor, as the case may be. In discharging this, everyday communication and coordination is essential to ensure that the aggrieved woman/survivor's interests and needs are given their due importance during the proceedings.

In a proceeding under the PWDV Act or any other civil law provision (matrimonial/custody & guardianship/inheritance etc.) on the other hand, it is the lawyer who will be representing the aggrieved woman/survivor, but must coordinate effectively with the Protection Officer, Service Provider and Police to ensure that there are no delays in completing the statutory procedures (such as filing the DIR, conducting a Home Visit Report, service of notice etc.) and that the survivor is protected and orders are implemented (developing & enforcing a Safety Plan, implementation of orders with support from Police etc.).

### **ROLE DURING INITIAL INTERACTION, INTERVIEWING THE AGGRIEVED WOMAN/ SURVIVOR AND COLLECTING RELEVANT DOCUMENTS**

- The lawyer, after receiving the aggrieved woman/survivor, must introduce himself/herself to her and clearly indicate the lawyer's role and the scope of the lawyer's functions.
- The lawyer must ensure that she/he receives the case notes from the case worker (this may be available through online MIS) who has already interacted with the aggrieved woman/survivor, and apprise herself/himself of the facts of the case as narrated by the aggrieved woman/survivor and recorded by the case worker. This is to ensure that the aggrieved woman is not made to repeat the case details unnecessarily.
- However, the lawyer must make sure that she/he has the complete facts of the case, and also screen for related legal issues such as custody of children, safety assessment and immediate shelter requirements. Information must be gathered patiently and attentively, and care must be taken for soliciting and determining the survivor's perceptions of events.
- The lawyer should attempt to first earn the trust of the aggrieved woman who has experienced sexual assault and/or abuse. It is important to remember that survivors of violence may withhold crucial information from lawyers out of feelings of self-doubt, shame, fear of disapproval, or disloyalty. It may take multiple meetings before the aggrieved woman/survivor becomes comfortable to provide details of the case.
- The lawyer should inform the aggrieved woman/survivor of the principle of attorney-client privilege and the scope of this privilege. This should include informing the aggrieved woman/survivor or her family of mandatory reporting requirements under the law, which may kick in if there is a third party present during the client interview/consultations.
- Aggrieved women/survivors who have undergone trauma may have difficulty processing or remembering new or technical information. It is important for the lawyer to take adequate time to communicate effectively with the aggrieved, to learn all the relevant facts of the case, and also to ensure that the aggrieved woman has a complete understanding of the legal process, remedies, and consequences. It is a good idea to involve the OSC case worker in the initial interactions to create a comfortable atmosphere.

- The lawyer should resist from using legal jargon, be sensitive to the socio-cultural context of the aggrieved woman/survivor, and not use language that is judgmental and insensitive.
- In case the aggrieved woman/survivor is not proficient in the language or is visually or speech/hearing impaired, the lawyer should engage the services of a professional and qualified interpreter.
- The lawyer must take care to find out if the aggrieved woman/survivor is being pressurized or coerced by her family members or others to drop the case. In case there is evidence of such coercion, the lawyer must immediately inform the case worker.

## **PROVIDING LEGAL COUNSELING**

- The lawyer, after apprising herself/himself of the facts of the case, must inform the aggrieved woman/survivor of her legal options and remedies, and the likely consequences of exercising those remedies. The lawyer must clearly assert that the aggrieved woman/survivor has complete autonomy over the case and that she has the right to take any decision that she thinks fit after considering her legal options.
- If the aggrieved woman/survivor wishes to file a complaint under the PWDV Act, the lawyer shall apprise the aggrieved woman/survivor of the options of approaching the police/ Protection Officer/ service provider/ Magistrate with her complaint. The aggrieved woman/survivor shall be apprised of the roles and responsibilities of each of the stakeholders.
- The lawyer should consult the aggrieved woman thoroughly to devise a case strategy and obtain the relevant documents. In case of a State prosecution under the IPC, the Public Prosecutor or Special Public Prosecutor would do this, and the survivor's lawyer's role would be to assist the Prosecutor. She/he should facilitate collation of the documents and assist the Prosecutor in finalizing the witnesses for the Prosecution. In cases under civil law including the PWDV Act, it is the lawyer who is solely responsible for representing the client.
- If the aggrieved woman/survivor chooses not to pursue a case, the lawyer must be respectful of her choice. It is important to remember that the ultimate choice of action rests with the aggrieved woman/survivor.

### Documents Checklist

#### **PWDV Act Cases:**

- Medico-Legal Certificate
- Documents/certificates issued by any treating medical doctor pertaining to the relevant act/s of domestic violence or which record injuries sustained as a result of domestic violence.
- Documents issued by a mental health professional pertaining to the aggrieved person's psychological status.
- Any First Information Report (FIR) or Non-cognisable [Offence] Report (NCR) alleging domestic violence previously registered by the aggrieved person.
- Copies of complaints received by any other authorities that the aggrieved person may have approached for assistance. For example: complaint letters to the respondent's employer, petitions submitted to panchayats or other adjudicatory/administrative bodies, petitions filed before the State Commission for Women or other statutory bodies, records of Service Providers/NGOs approached earlier.
- Correspondence between the aggrieved person and other family members in which she records incidents of domestic violence (preferably dated).
- List of stridhan articles.
- Documents that are needed to support claims for relief under the PWDVA, particularly
  - **'domestic relationship' include:** Ration card, Passport, Photograph with mangal sutra, wedding invitation cards, Bills of the marriage hall, Photographs or video recordings of the marriage, Certificate from the temple or priest who performed the marriage
  - **Proving the aggrieved person's standard of living:** joint bank accounts, salary statements, rent receipts, bills and other pertinent financial matters such as pay slips of the respondent, income tax returns, bank papers, share or bond certificates, receipts for significant purchases; documents of tuition fees and other expenses of children.

#### **Rape/Sexual assault Cases (including POCSO):**

- Medico-Legal Certificate
- Forensic Lab Analysis Report
- Proof of Age, which include Birth Certificate, Panchayat or civic records, School Leaving Certificate, Passport, Aadhar or other records.
- Panchnama & other relevant documents to be forwarded by the Police along with the Chargesheet
- Any existing Safety assessment and Plan
- Any FIR/NCR/complaint previously filed by the survivor against the same accused person relating to attempted SA/sexual harassment/stalking etc.



## IMMEDIATE STEPS

- Make appropriate referrals to support services including counseling and shelter, if it has not already been done in the OSC.
- Maintain close coordination with the IO and the Public Prosecutor, and keep the aggrieved woman/survivor informed at all times of the developments in the case. In cases of domestic violence, the lawyer shall coordinate with the Protection Officer/ Service Provider.
- If the complainant chooses to engage a private lawyer to represent her during the trial, the OSC lawyer shall ensure that the Public Prosecutor coordinates with and works with the private lawyer to best represent the wishes of the complainant.
- Safety assessment and Safety planning should take place throughout the proceedings. In case a safety plan has already been developed by the OSC, the lawyer should review it with the aggrieved woman to understand if there are any additional/emerging safety risks. If the lawyer does not feel equipped to undertake a safety assessment, she/he should take the support of the Case Worker or OSC lawyer. **Please note:** Safety planning is a dynamic exercise and should be considered as part of the case strategy itself because very often, an assessment can reveal valuable additional information that may help the prosecution's/aggrieved woman's case.

### Safety Planning: Some Pointers

In domestic violence cases, leaving the respondent is not the most appropriate safety strategy. In fact, effective safety planning can be done even where the aggrieved woman decides to return to the shared household or continues to reside there. What is important is to make sure that she has the relevant support mechanisms and knows what to do in case of an imminent threat. A domestic violence safety plan may include (but is not limited to): methods for limiting harm during a violent incident; keeping children safe from abuse; preserving assets; minimizing opportunities for abuse at court, at home, at work, online, or at school; planning before leaving an abusive relationship; and enforcing a protection order.

In sexual assault cases, safety planning may include helping aggrieved to identify what they need to feel safe – at work, at home, at school, and in transit. Other measures that can be taken include having the victim change routines, relocating and informing friends and family of the potential risks.



## **ASSISTANCE IN FILING A FIR/DIR**

- If the aggrieved woman/survivor chooses to initiate legal proceedings against the abuser, the lawyer must first guide her on the steps required to be taken for filing the FIR/complaint. The woman should be apprised of the importance of speaking the truth in the statement, and the implications of making a false statement or embellishing the statement with false or exaggerated claims.
- The lawyer, in coordination with the Police Facilitation Officer (PFO), will assist the woman in lodging a FIR/ complaint. In case of non-cooperation from the police station in filing the FIR/complaint, the lawyer along with the PFO and Centre Administrator will take all the necessary steps to expedite the process, including approaching the Superintendent of Police or other authorities.
- In case of domestic violence, the lawyer will facilitate the recording of DIR through the PO or where the OSC itself is registered as a SP, the lawyer will assist the case worker in recording the DIR.
- If the woman is not willing to go to the police station for lodging the case, the lawyer, in coordination with the PFO, shall ensure that the statement is recorded from the woman's home/OSC/hospital.
- The lawyer shall, in coordination with the PFO, facilitate the recording of statement under S.161 CrPC through use of audio-video means.
- In cases of rape and sexual assault, the lawyer shall inform the aggrieved woman/survivor of her right to privacy and confidentiality as contained in S. 228A IPC and in cases of abuse of children, S. 23, POCSO.

## **DURING THE STAGE OF TRIAL OR PROCEEDINGS**

In a civil case, the lawyer will be required to prepare and present the plaint/application along with the relevant documents, and thereafter, argue the case.

However, the legal recognition of the survivor's right to engage independent legal counsel in a State prosecution is limited. Section 24(8) CrPC empowers the Court to '*permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.*' Section 40 of the POCSO Act also provides for assistance of legal counsel to the family or guardian or the child, including provision of a DLSA lawyer.

Section 301(2) CrPC lays down the scope of a survivor's lawyer's role to assist the prosecution in cases of rape and sexual assault under the IPC. As per Section 301(2) of CrPC, the role of the Survivor's lawyer is -

- To act under the instructions of the Public Prosecutor and take the permission of the Court if a Special Public Prosecutor has been appointed to conduct the case, and assist the prosecution; and
- After the evidence of all the witnesses is recorded, to submit written arguments to the Court with its permission.

However, with an increasing victim-centered approach to criminal justice, the need for a lawyer for the survivor who provides comprehensive support during the prosecution is gradually gaining recognition. For instance, in *Delhi Domestic Working Women's Forum v. Union of India*<sup>7</sup>, a three-judge bench of the Supreme Court explained the enhanced role of the survivor's lawyer in sexual assault cases:

*"The complainant of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance."*

#### **Recommendations of the Justice J.S. Verma Committee**

The Verma Committee recognised the important role of an advocate assisting the survivor. The Committee duly noted in Para 26 and 27, respectively:

*26. The Committee is of the opinion that in cases of rape/sexual assault, additional representation, if sought, is made available to the complainant/victim prior to and during the trial. While the sole responsibility of carriage of prosecuting a crime lies with the State, we consider it necessary to suggest that in rape/sexual assault cases the complainant and/or the victim must have the opportunity to engage his/her own lawyer. The said lawyer would also be permitted to assist the prosecutor, examine witnesses and make submissions to the Court.*

*27. We have also taken note of proviso to Section 24(8) of the CrPC, which empowers the Court to permit the victim to engage an advocate of his/her choice to assist the prosecution under this Section. However, we would like to add that it is necessary to confer an independent right of representation in favour of the victim. In other words, we wish to make it clear that it should be a statutory right as a part of due process of access to justice that the victim/complainant will be able to engage a lawyer of his or her choice – that is, the victim's advocate should have a right of audience in his/her own right, and not merely in a support capacity to the prosecutor. The Committee believes that this will add an additional level of oversight in the trial process."*

*Source: Lawyers Collective; Locating the Survivor in the Criminal Justice System (2014)*

<sup>7</sup> 1995 SCC (1) 14

Under Section 2(u), CrPC a person acting under the Public Prosecutor must be considered a Public Prosecutor, and therefore, the general responsibilities and obligations of Public Prosecutor will apply to a private or legal aid lawyer limited to the extent of the case in which he is assisting the prosecution.

- In a criminal prosecution, the lawyer must inform the survivor about the remand or bail applications filed by the accused, and assist the Prosecutor in opposing the application.
- The lawyer must also inform the survivor about her right to compensation under Sections 357 and 357A of CrPC, and assist to make the application for interim compensation to the DLSA as well as the Court. **Please Note:** being the empanelled DLSA lawyer, she/he is in a position to effectively coordinate for compensation.

#### **Good Practice: Delhi Police Circular on Role of Survivor's Lawyer**

Survivor's lawyer must inform her about the remand or bail application filed by the accused; the lawyer must attend every Court hearing and keep the survivor informed about the proceedings; the lawyer can work closely with DLSA to ensure compensation is provided to survivor expeditiously.

Further, as per the order of the Delhi High Court, the Rape Crisis Centre Lawyer is required to inform the survivor about the remand or bail application filed by the accused.

*[Source: Circular No. 53/Record Branch/PHQ – 2011, Issued by the Commissioner of Police, Delhi]*

- The Public Prosecutor should allow the survivor's lawyer to access the case files, except the Police Case Diary. The lawyer should also brief the Public Prosecutor as to recent developments and material facts that she/he might have obtained during the client interviews. The Public Prosecutor should also be informed about any witness protection needs.
- In a case under the PWDV Act, the lawyer must consult the aggrieved woman and finalise the application to be filed under Section 12, including the reliefs to be sought. All the relevant documents must be submitted along with the application (Please see Checklist).
- The lawyer should advise the aggrieved woman about the reliefs that should be sought depending on the facts and circumstances of the case and her specific requirements. For instance, a Protection Order restraining the respondent from contacting the children at home or in their school along with temporary custody of children should be sought if the respondent has been violent towards them or if the woman fears that he could contact them at school. Another example is opting for alternate accommodation if the violence

has been too severe as to make it impossible for the client to reside in the shared household with the respondent.

**Please Note:** The Courts have held that DIR is not a precondition to filing an application under Section 12 of PWDV Act.<sup>8</sup> In case the Court insists on a DIR, this must be brought to the Court's notice.

**Also Note:** While Form II of the PWDV Rules provides a format for the application, it is not the only format. An application can be filed in the ordinary format prescribed by a Court. In case Form II has been used and additional details are required to be filled in, the Court should accept additional pages that are appended with Form II.

- The lawyer should file an application for ex-parte *ad-interim* order (order before issuing notice), in case the aggrieved woman apprehends immediate threat of violence or where she may be seriously prejudiced otherwise. The Court may pass an ex-parte *ad interim* order on the basis of affidavit<sup>9</sup>:
  - On prima facie disclosure of commission of domestic violence or;
  - If there is likelihood that the Respondent may commit domestic violence.
- The lawyer should coordinate with the Court and Protection Officer/Police to ensure that notice is served, and request the Court for a home visit or enquiry as to standard of living of respondent, in appropriate cases.
- In a civil case for custody/guardianship, for divorce/judicial separation, or for suing in tort, a suit under the relevant provisions of the Civil Procedure Code, 1908 (CPC) must be filed. Ordinarily in such cases, jurisdiction will lie with the City Civil Court/District Court/Family Court, as may be applicable. Some High Courts also have letters patent jurisdiction and can entertain such suits.

**Please Note:** In case the aggrieved woman/survivor wants to apply for maintenance under Section 125 CrPC, the appropriate forum is the Metropolitan Magistrate/Judicial Magistrate of I<sup>st</sup> Class or the Family Court, where it is so established. The procedure followed in this case is provided under Sections 125-127 CrPC.

- While preparing a plaint, the lawyer should ensure that along with the necessary details and documents, interim prayers are sought. An additional application for interim reliefs may also be filed along with the plaint. Where interim injunction is being sought, the application must be filed at the earliest as delay may adversely affect the claim.
- While filing for divorce, it is advisable that issues of maintenance/*stridhan*, property and custody should also be included in the main plaint so as to enable a decision instead of leaving them for a later stage. However, in case the parties cannot arrive at an amicable solution on these issues or where the aggrieved woman/survivor wants an immediate separation to prevent further violence, the lawyer should keep these issues (except the

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<sup>8</sup>*Shambhu Prasad Singh v. Manjari, Delhi High Court [(190) 2012 DLT 647], Nand Kishor v. Kavita and Anr. [2010 (1) KHC 852]*

<sup>9</sup>Section 23(2) r/w Form III. Affirmed in *Preceline George @ Antony Preceline v. State of Kerala & Ors*; Kerala High Court at Ernakulum in WP (C ) No. 30948 of 2009 (Q) and *Sri Sujoy Kumar Sanyal V. Smt Shakuntala Sanyal (Haladar) and Anr.*; Calcutta High Court; (2010)3 C Cr Lr (Cal) 731

issue of right of residence, which the Courts have held to have been divested from a divorced wife on waiving claim of maintenance<sup>10</sup>) open. As far as possible, all the claims should not be given up in a standard clause.

**Please note:** If the aggrieved woman/survivor's husband has already filed a petition for divorce, a counter claim can be filed on the ground of cruelty (or any other) along with the written statement.

### ***Preparing for and During Evidence***

- In prosecution for sexual assault, the Lawyer is required to assist the Public Prosecutor in court, attend all court hearings and accompany the survivor in the courtroom whenever she is required to be present before the court. If during oral submissions of the Public Prosecutor, some legal arguments have not been advanced or some relevant fact has not been placed before the Court due to inadvertence or otherwise (for example, no time or opportunity to discuss such aspects between the Public Prosecutor and the lawyer assisting the prosecution) the lawyer assisting the prosecution may, with permission from the Public Prosecutor, raise such a question.
- The lawyer should also assist the Prosecutor by preparing the survivor for examination and cross-examination. Since the lawyer would have already established a relationship of trust with the survivor, it is important that she/he briefs the survivor as to the courtroom procedures and the questions that are likely to be posed by the defense lawyer. The survivor may also be taken to the courtroom prior to the date of hearing to help build her confidence. The OSC Case worker may also accompany the survivor.
- If the survivor has practical difficulties in attending trial, such as problems with transport or child care, the Lawyer should inform the case worker and the Prosecutor, who can then organize referral agencies for this purpose.
- In a PWDV Act case, the lawyer should lead evidence through affidavits and prepare thoroughly for cross-examination. For final orders under the Act, summary procedure as prescribed under Sections 262-264 of the CrPC is to be followed. This means that for purposes of the proceedings, the Court shall as far as possible, pass orders on the basis of affidavits. While passing final orders, where facts have already been admitted, no cross-examination may be required<sup>11</sup>. The guidelines in the previous section on expert witnesses and other credible witnesses may also be taken note of.
- During the closing arguments, the lawyer should emphasize on the reliefs sought, including the need for an accompanying protection order or a specific direction to the police for enforcement of orders.

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<sup>10</sup>BP Achala Anand v. S. Appi Reddy (2005) 3 SCC 313; Ruma Chakraborty v. Sudha Rani Banerjee (2005) 8 SCC 140.

<sup>11</sup> Section 156, CrPC

- In other civil cases too, following the CPC procedure, evidence is led through affidavits, with right of cross-examination. The final arguments are generally oral and as per Order XVIII of CPC, can also furnish written arguments.
- The Supreme Court in *Sakshi v. UOI*<sup>12</sup> and High Court of Delhi in *Delhi Commission for Women v. Delhi Police*<sup>13</sup> and *Sheeba Abidi v. State of Delhi and Anr.*<sup>14</sup> has issued guidelines for examination and cross examination in rape and child sexual abuse cases.

### ***Seeking Compensation***

- Once the case results in a conviction, the survivor's lawyer should coordinate with the Public Prosecutor to pray for compensation under Section 357 CrPC. Under Section 357C CrPC compensation can be given from the fine imposed upon the convict. If fine does not form part of the sentence, the Court may order appropriate compensation without imposing fine under Section 357(3) CrPC.
- Independently, the lawyer should also proceed with the application under Section 357A CrPC for final compensation as per the Victim Compensation Scheme. The lawyer should also coordinate with the DLSA to ensure compensation is disbursed expeditiously.
- Where the offender is not traced or identified and the trial does not take place, the survivor's lawyer can make an application to the District / State Legal Service Authority for compensation under Section 357A (4), CrPC.

**Please Note:** The lawyer should also check whether the State Government (SLSA or otherwise) has notified any other Compensation Scheme for victims of VAW. For instance, the Maharashtra Government has notified the 'Manodhairya' Yojana, which seeks to provide at providing financial, medical and legal aid, rehabilitation and counselling to survivors of rape and child abuse. This is in addition to the Victim Compensation Scheme formulated under Section 357A CrPC. In such cases, the lawyer should check if the aggrieved woman/survivor is entitled to compensation under both Schemes or choose the appropriate Scheme.

- Additionally, where the aggrieved woman/survivor belongs to the SC/ST community, she will also be entitled to compensation under Rules 12(4) of the SCs & STs (Prevention of Atrocities) Act, 1989. Annexure I of the Rules provide for the norms of relief to be provided, according to which, in case of 'Outraging the modesty of a woman' and 'Sexual exploitation of a woman', Rs.50,000/- is to be provided (50% after medical examination and remaining 50% at the conclusion of the trial). Additional compensation is also to be provided to children/legal heirs in case of rape, mass rape, gang rape and murder.

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<sup>12</sup>AIR 2004 SC 3566

<sup>13</sup>W.P.(CRL) 696/2008

<sup>14</sup>113 (2004) DLT 125

## ROLE AFTER LITIGATION

Ethical representation does not end with the hearing. At a minimum, the lawyer should ensure that the aggrieved woman/survivor understands the outcome of the proceedings, discuss enforcement and any alternative legal options, and, when the client-lawyer relationship has ended, clearly communicate that fact to the aggrieved woman.

- *Ensure that the judgment/order of the Court, as the case may be, is read over and clearly understood by the aggrieved woman/survivor.*

If the Court has granted a protection or residence order under the PWDV Act which has certain conditions attached or a time limit that fact should be clearly explained to the aggrieved woman/survivor with a discussion on the next steps. She should however, be allowed the time and space to decide whether she wants to take the next steps, including changing her lawyer.

- *If the judgment/order does not result in a conviction/effective relief, as the case may be, the lawyer should discuss the possibility of appeal or modification of order.*

In case of an acquittal or lesser sentence, the lawyer should discuss the possibility of appeal thoroughly with the aggrieved woman/survivor and based on the directions received from the aggrieved, brief the Public Prosecutor/Special Public Prosecutor, as the case may be. **Please Note:** Proviso to Section 372, CrPC gives the survivor a right to appeal against any order acquitting the accused or convicting him for lesser offence or imposing inadequate compensation.

In *Parmeshwar Mandal v. State of Bihar & Ors*<sup>15</sup>, a Division Bench of the Patna High Court held that:

*“the right of a victim to prefer an appeal in terms of the said proviso is an unqualified right and no “leave to appeal” or “special leave” is required to be obtained by him/her for the purpose....”* The Court further held that *“no limitation of time has been provided by the Legislature for exercise of such a right of appeal by the “victim” in terms of the said Proviso”*. It is up to the Court to determine whether appeal can be entertained based on facts and circumstances of the case.

In case of any adverse order which is not in keeping with the needs of the aggrieved woman, the lawyer should discuss the pros and cons of filing an appeal or applying for modification/alteration of the order.

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<sup>15</sup> 2014 Cr.L.J. 1046.

- *Ensure follow-up with the aggrieved woman/survivor, particularly in cases where a safety plan/witness protection was in effect.*



## **Annexure I: Monitoring Indicators for Functioning of OSC Lawyer**

- Knowledge of laws, regulations, and practices including understanding of related laws that may impact the aggrieved woman/survivor's case
- Functional competency and knowledge of ethical principles necessary to establish and maintain relationship of trust with the woman who is a survivor of VAW
- Training and skill in understanding the specific context of the aggrieved woman, including the dynamics of violence and power relationships, the social and cultural environment, and the economic situation (of dependency) which have an impact on the litigation strategies
- Ability to interview and counsel the aggrieved woman with the correct range of legal options, keeping in mind, her needs and desires. This includes the ability to identify the related legal issues and consequences for the aggrieved woman/survivor.
- Ability to conduct thorough research and designing effective strategies and solutions in a timely manner
- Ability to navigate multiple systems effectively utilizing the skills of advocacy, coordination, negotiation, and in-court advocacy to achieve desired results (this would be broken down into coordination with Prosecutor and other agencies/stakeholders)

## **Annexure II: Standard Operating Procedure For Prosecutors**

### **INTRODUCTION TO THE SOP**

This Standard Operating Procedure ('SoP') for Prosecutors is meant for use when prosecuting cases of violence against women that reach the One Stop Centres on VAW (OSC). The SoP recognizes that Public Prosecutors (PPs) are already familiar with the existing procedures under the Code of Criminal Procedure, 1973 (CrPC) as also the relevant Police Rules and High Court/District Court Rules. However, in view of the fact that in the cases which reach the OSC, the Prosecutors are required to interact with and present the case of aggrieved woman/survivor(s) of VAW, this specific SoP focuses on a victim centered approach to prosecution which has become an important feature of criminal justice system response globally.

#### ***What is a victim centered approach in CJS response***

Prosecutors have a vital role within the criminal justice system (CJS) – in ensuring successful prosecution and conviction of the offender. They can also play an important role in advising the police during the course of the investigation, decision to charge sheet or not, arguing bail and remand applications, recommending measures for victim protection before the Court, and supporting the application for compensation to the aggrieved woman/survivor. However, increasingly, the world over, a victim-centered approach is being adopted in the CJS response, particularly in cases of sexual assault and other forms of VAW as well as crimes against other vulnerable groups.

*A victim-centered approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. It seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process.*

***In a victim-centered approach, the victim's wishes, safety, and well-being take priority in all matters and procedures.<sup>16</sup>***

A criminal justice system focused on a victim-centered approach will create an environment in which sexual assault survivors are encouraged to report incidents of sexual assault and are supported throughout the process.

In India, the amendments to the Criminal Procedure Code in 2008 and the comprehensive amendments in 2013 have introduced specific victim-centered measures. The provision for appointing a lawyer by the victim in criminal cases under proviso to Section 24(8) CrPC, special measures for recording statement of victims of rape & allied sexual offences,

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<sup>16</sup> New Jersey 'Standards For Providing Services To Survivors Of Sexual Assault' (1998); Sourced from: <<http://www.njdcj.org/standar2.htm>>

particularly those who are differently abled under Section 164 (5-A) CrPC, medical examination of rape victim under Section 164-A CrPC, the victim's absolute right to appeal against an order of acquittal/sentencing/compensation under Section 372 CrPC, the positive changes in evidentiary standards, particularly in rape and allied sexual offences – are some of the crucial changes that clearly lay down a victim-centered CJS framework.

Within this framework, the Prosecutor while remaining first and foremost, an officer of the Court, also encourages and supports the aggrieved woman/survivor and her private lawyer (or legal aid lawyer) to participate in the trial proceedings on a regular basis.

## **GUIDING PRINCIPLES**

### ***Prosecutor must be sensitive to the aggrieved woman/survivor's needs and consider her physical, emotional and psychological well being***

- When dealing with a aggrieved woman/survivor of VAW, particularly sexual assault, the Prosecutor must be sensitive and patient. She has undergone a lot of trauma and may not remember certain details from her earlier statements (made in FIR and Section 161 CrPC). The Prosecutor should take this into account and build her confidence.
- The Prosecutor should try to minimise delays and inconvenience to the aggrieved woman/survivor and witnesses. Opposing the defence counsel's request for adjournments, proactively recommending victim protection measures are some examples.

### ***Prosecutor must respect the right to privacy of the aggrieved woman/survivor***

- The Prosecutor must abide by the law in its letter and spirit. The procedural law in VAW cases provides specific measures for protecting the right to privacy of the aggrieved woman/survivor, which must be followed diligently.
- No information about the incident or the statement given by the survivor or any circumstances concerning the survivor shall be leaked or shared with the media or any third non interested party by the Prosecutor
- It is important to remember that as per S. 228A of the Indian Penal Code, disclosure of the identity of the survivor of sexual offences is a punishable offence.

### ***Prosecutor must coordinate with other involved agencies/stakeholders to ensure comprehensive support and services to the aggrieved woman/survivor during the course of trial***

- The Prosecutor must coordinate with the other OSC functionaries such as case worker, Lawyer, police and medical personnel on a regular basis to ensure that firstly, the prosecution case is presented in an effective manner, and secondly, the aggrieved woman/survivor receives comprehensive support and services.

- In particular, the Prosecutor must respect the aggrieved woman/survivor's decision to engage a private lawyer/empanelled legal aid lawyer by coordinating with the latter and taking into account her/his suggestions, which are likely to be based on the aggrieved woman/survivor's wishes.

### ***Other Ethical & Professional Principles<sup>17</sup>***

- To perform duties independently, impartially and without fear, favour or prejudice
- To abstain from participation in any activity which violates the neutrality of her/his office
- To refuse gifts, donations, favour or sponsorship that may compromise or perceived to compromise her/his professional integrity
- To remain unaffected by individual, sectional or communal interest and public or media pressure, and protect public interest
- To avoid as far as possible, accepting briefs or cases, which are prejudicial/in conflict with the prosecution's case.
- To avoid making inappropriate public comments outside the court or speak to media about the merits of a case being conducted by him before the court or state about the guilt or innocence of the accused before the judgment by the court

## **ROLE OF THE PROSECUTOR: PRE-TRIAL PROCEDURES**

The Prosecutor has a limited role at this stage. The specific situations/scenarios wherein the Public Prosecutor is required to get involved is described below.

### • ***Bail***

Opposing bail application by the accused in a case of non-bailable crimes, particularly rape and sexual assault is essential, not only to prevent stigma to the aggrieved woman but most critically, to ensure that the accused does not threaten or intimidate the aggrieved woman/survivor and other prosecution witnesses.

Where the Court grants bail to the accused, the primary concern is to ensure safety of the aggrieved woman/survivor and witnesses. The Prosecutor must pray for specific conditions in the Court order that the accused shall not attempt to contact the aggrieved woman/survivor and witnesses or that the evidence shall not be tampered with.

### • ***Police Report to Magistrate or Charge sheet***

Under Section 173(2)(i) of CrPC, on completion of investigation, the officer-in-charge of the police station is required to send a Police Report or Chargesheet to the Magistrate who is empowered to take cognizance of the offence.

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<sup>17</sup> Adapted from Lawyers Collective & UNICEF; *Monitoring Guidelines for NCPDR/ SCPCR for Roles and Functions of Various Stakeholders/ Police, Special Courts and Special Prosecutors*; Sourced from: <<http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=407&lid=844>> (2014)

**Please Note:** Where the investigation relates to an offence under Section 376, 376A, 376B, 376C, 376D or 376E, the police report to the Magistrate must specifically mention whether the medical examination report of the survivor has been attached [Section 173(2)(i)(h) CrPC].

The informant, who gives information about the commission of the offence, is to be informed about the action taken by the police officer on the basis of its investigation conducted under Section 173(2)(ii).

Where, after the investigation, the police recommend no prosecution by filing the closure report, the survivor and the first informant have the right to protest and be heard by the Magistrate.

If the Magistrate after hearing the protest petition of the survivor takes cognizance of the offence based on the material in the final report or the Case Diary, the Prosecutor will prepare to prosecute the case.

In cases to be tried by Sessions Court, at the committal stage when a complaints case is before the Magistrate, the survivor's lawyer would not be obliged to work under the directions of the Public Prosecutor, as required by Section 301(2) of the CrPC, because the formal role of the Public Prosecutor in such cases begins only after the committal.

- ***Framing of Charge***

Once the case is committed to the Sessions Court, the Public Prosecutor shall open the case by describing the allegations against the accused and plead for framing charges or issue of notice.

## **ROLE OF THE PROSECUTOR: DURING TRIAL**

- ***Preparing the List of Documents to be Admitted or Disputed***

After the charge is framed and the plea of the accused is taken, the Prosecutor shall make list of documents filed by the prosecution, and the accused or his/her advocate will be called to admit or deny their genuineness. Any document including medico legal case report (MLC), which is not disputed, may be read in evidence without the proof of signature of the person signing it under section 294 CrPC.

The Prosecutor is also required to assist the Court in preparing questions to be put to the accused under Section 313 CrPC.

- ***Examination-in-Chief: Refreshing the Survivor/Witnesses' Memory***

The Prosecutor must meet the aggrieved woman/, in advance, before the trial and brief her about the proceedings. This will ensure that the aggrieved woman is familiar and comfortable with the Prosecutor and the trial proceedings, and the Prosecutor also gets a firsthand account of the case from her.

**Please Note:** This is not only an effective victim-centered measure but can also play in crucial role in litigation strategy, by allowing the Prosecutor to assess the strengths and weaknesses of the prosecution witnesses and revising the case presentation.

With reference to the above, the summons for recording of deposition to the aggrieved woman shall be served at least 3-5 days in advance and if necessary, pre-visit to the Court may be arranged to familiarize her with the Court atmosphere. For this, the assistance of the survivor's lawyer may be taken.

The Criminal Law Amendment Act 2012, **under** section 164(5) CrPC, now makes it mandatory for the Magistrate to record statement of the aggrieved woman of rape and other allied offences. If the aggrieved woman/survivor is temporarily or permanently mentally or physically differently-abled, this statement shall be videographed and considered **in lieu of examination-in-chief**.

Under Section 159 of IEA, a witness or aggrieved woman may refresh her memory with her relevant previous statement while under examination or in the witness box. This is subject to the right of the defence to see and cross-examine the witness.

This provision for refreshing the memory is particularly important because in protracted criminal trial proceedings, the witness or aggrieved woman deposes long after the commission of the offence and the registration of the FIR. While in cases under Sections 376 and allied offences, establishment of Fast track Courts have accelerated the time taken to conclude the trial to a large extent, even then, they cannot be expected to accurately recollect their statement and undergo cross-examination wherein the defence will pose questions requiring minute details.

Please refer to the Guidelines of the Supreme Court in *Sakshi v. Union of India*<sup>18</sup> and other High Court for cross-examination of aggrieved woman/survivor(s) in case of sexual abuse.

- ***Medical and Forensic Evidence***

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<sup>18</sup> AIR 2004 SC 3566

### Evidentiary Burden and Presumptions in Rape and Other Allied Offences

The burden of proof of rape where aggravating circumstances exist, is always on the prosecution and is discharged when sexual intercourse is proved, and by an affirmative statement by the woman that she did not consent<sup>19</sup>

This reversal in burden of proof occurred by introducing Section 114A into the Indian Evidence Act, 1872 (IEA), which raises a presumption of absence of consent in certain cases of rape. Evidence of *immoral character of rape victim* was admissible till 2003, when the law was amended<sup>20</sup>. Consequent changes were also made to the provision on questions permissible in cross-examination<sup>21</sup>.

In addition, Section 53A of IEA, inserted in 2013 provides a broader qualification, stating that in cases of sexual assault and rape where the question of consent is in issue, *“evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”* Through a series of case laws it has also been determined that the sole testimony of the prosecutors is sufficient in cases of sexual assault to hold the accused guilty.<sup>22</sup>

The amendments of 2013 also introduced a positive definition of consent in rape law. Earlier, consent was interpreted as the lack of ‘fear and misconception’.<sup>23</sup> As per Section 375 IPC (amended in 2013), “consent” is defined to mean *“unequivocal voluntary agreement”* and *“willingness to participate in the specific sexual act”*<sup>24</sup>.

Further, the law recognizes that lack of physical resistance to the act of rape is not equivalent to consent. It states, *“a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”*<sup>25</sup> This is significant as it means that lack of “injuries” is no longer to be considered to imply “consent”.

*Source: Lawyers Collective; UN Study on Policing and Prosecution of Sexual Violence in India: Country Report (2014; to be published)*

Lack of clarity on all aspects of medical evidence and its usage as an interpretative tool can be a major barrier to successful prosecution. Hence, it is imperative that the Prosecutor develops

<sup>19</sup> *State of Punjab v. Gurmit Singh*, AIR 1996 SC 1393

<sup>20</sup> Section 155(4), IEA, 1872

<sup>21</sup> Section 146, Questions Lawful in Cross Examination, IEA, 1872

<sup>22</sup> *Narendra Kumar v. State (NCT of Delhi)*, AIR 2012 SC 2281

<sup>23</sup> Section 90, Indian Penal Code, 1860: 90. *Consent known to be given under fear or misconception.*

<sup>24</sup> Section 375 (Explanation II), Indian Penal Code, 1860: *Explanation II: Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:*

<sup>25</sup> Section 375: Rape (Proviso), Indian Penal Code, 1860.

a sound understanding of the medical evidence in each case, particularly the reasons for negative medical evidence.

**Medical evidence comprises of:**

- Trace evidence in the form of Semen, Spermatozoa, Blood, Hair, cells, Dust, Paint, Grass, Lubricant, Fecal matter, Body fluids, Saliva.
- Could be Injuries either on the Body / Genitals
- Could also be sexually transmitted infection that the perpetrator has passed to the survivor in the form of HIV, Hepatitis, Gonorrhea and unwanted pregnancies.

First and foremost, the Prosecutor must understand that negative medical evidence in a case does not mean that rape and/or sexual assault did not occur. What it simply means is that the evidence was lost, possibly due to factors such as delay in reporting to the hospital, bathing and change of clothes, or that the nature of assault was such that medical evidence was minimal. Medical evidence cannot be found after 96 hours (*MoH&FW 'Guidelines & Protocols: Medico-legal care for survivors/victims of Sexual Violence'; 2014*).

**Two Finger Test Is Unconstitutional**

The Supreme Court has ruled the two-finger test as unconstitutional in the case of *Lillu @ Rajesh and Anr vs. State of Haryana* AIR 2013 SC 1784. The Court held that this test violated the constitutional rights of privacy and bodily integrity.

In a recent judgment in *Akhtar vs. State of UP* (2014) 87 ALLCC 482, directions were issued prohibiting two-finger test without consent "... and to employ modern gadget based or other techniques for ascertaining whether the victim has been subjected to forcible or normal intercourse." It must be clarified that finger test examination with consent or without consent is a violation of the law. Usage of the finger test and medico legal documentation leads to questioning the character of the victim. Such a test will result in to stating whether one finger or 2 fingers are passed easily in the vagina, which will result in to commenting on past sexual life of the victim. Such information has been stated as being inadmissible in the court of law by the Indian Evidence Act 1872. Hence it is irrelevant to state that if a victim consents to finger test, it should be carried out. Another concern is use of modern gadgets or technique. In view of the expanded definition of rape and sexual assault as per CLA Act, 2013, law also recognizes non-penetrative assault. Thus, the presumption that all sexual assault is peno-vaginal should be discarded.

Often, per vaginal examination and 2-finger test are confused with each other. Per vaginal examination is done with the purpose of identifying clinical causes underlying a specific medical condition. This is followed up with a treatment plan. A rape survivor may require such an examination depending upon the nature of sexual violence and whether she is experiencing bleeding, vaginal pain, discharge etc, after which treatment would be offered for these conditions. But this is different from the finger test, which is done to determine laxity of vaginal walls and habituation of a victim to sexual activity. Even for carrying out per vaginal examination, consent must be sought from victim in simple language and treatment offered.



Medical evidence is merely corroborative in nature, and should be presented by the Prosecutor during trial as such.

**Ministry of Health & Family Welfare ‘Guidelines & Protocols’**

The MoH&FW ‘Guidelines & Protocols: Medico-legal care for survivors/victims of Sexual Violence’ is an essential reading for Public Prosecutors to understand medico-legal evidence.

The section on medical opinion should be read carefully and referred to when presenting medical evidence in court. There are examples where absence of medical evidence due to menstruation or delay has helped in seeking justice.

*Source:* *MoHFW, 2014*  
(<http://www.mohfw.nic.in/showfile.php?lid=2737>)

The examining doctor is also likely to have limitations when deposing as an expert witness, particularly in cases where the medical evidence is negative. The Prosecutor must keep this in mind and seek corroborative evidence. The Prosecutor must also present this aspect before the Court so that weakness in the medical expert’s testimony because of negative medical evidence does not become prejudicial to the prosecution’s case. The Prosecutor should also be aware that examining doctors

should not be asked “Yes” or “No” questions. Instead, they should be allowed to describe health consequences.

The Prosecutor must also recognize that the aggrieved woman during the medical examination may have revealed additional details/information to the examining doctor (recorded in the medical history), which may not be in the FIR or the Sections 161 or 164(5) statements. To ensure that these are not misconstrued as “differences”, the Prosecutor must be prepared to appreciate and present the statements accordingly. Interacting with the examining doctor to understand the nuances of evidence may be useful, without appearing to be “tutoring” him. This would also help the doctor to understand his role as an expert witness and be well prepared for the deposition.

The Prosecutor should also be aware about components of medico-legal examination of perpetrator. Often perpetrators claim lack of potency by way of medical tests such as testicular reflex, cremastic reflex, disease of the vas, systemic examination, deformity from other diseases etc. However the Prosecutor should be aware that these medico-legal tests are unscientific and do not form a part of medico-legal examination as mentioned in Section 164A of CrPC. The definition of rape under IPC as per CLA Act 2013 has also gone beyond penetration by penis and mentions use of objects, and other forms of assault.

In the above context, please see **Appendix I** for understanding nature of evidence based on history of sexual violence. This is important information for the Prosecutor since it enables her/him to identify what is legally permissible and medically feasible evidence. Prosecutors should also be well versed with understanding the nature of medical evidence to be collected in specific forms of sexual violence. Similarly they should also be aware of the limitations of medical evidence.

- ***Recommending Witness Protection***

The Prosecutor shall recommend witness protection to the Court, and the Court shall, having regard to the materials placed before it, pass such an order as may be deemed necessary.

The 198<sup>th</sup> Report of the Law Commission of India<sup>26</sup> discussed the issue of witness protection and witness identity protection in detail, and made the following key recommendations:

*.....witness protection is necessary even at the stage of investigation. This can be provided by the prosecutor moving the Magistrate to conduct a preliminary inquiry or voir dire, in his chambers, i.e. in camera. The Magistrate will have to consider the material relied upon by the prosecutor for substantiating the danger to the witness or his property or those of his relatives, and, if necessary, the Magistrate can examine the witness.*

It further recommended that during the trial, the witness or the Prosecutor must submit a fresh application before the trial court.

#### **High Court of Delhi Guidelines on Witness Protection**

In *Mrs. Neelam Katara v. Union of India & Ors.*, ILR (2003) II Del 377, the Delhi High Court issued the following guidelines, which are to be in operation until legislation is passed in this regard:

- The Court has also made it compulsory for the investigating officer of a case to inform the witness about the new guidelines.
- The Court has appointed the Member Secretary of the Delhi Legal Services Authority to decide whether a witness requires police protection or not.
- The competent authority shall take into account the nature of security risk to her/him from the accused, while granting permission to protect the witness.
- Once the permission is granted, it shall be the duty of the Commissioner of Police to give protection to the witness.

Section 228-A of the IPC prohibits disclosure of identity of aggrieved woman/survivor of cases under Sections 376, 376A-376D IPC. In *State of Karnataka v. Puttaraja* AIR 2004 SC 433, the Supreme Court laid down guidelines for protection of identities of victims of rape.

The sanctity of victim identity in cases of rape and sexual assault has also been emphasized by Press Council of India, which is a quasi-judicial body, in its Guidelines on the issue.<sup>27</sup> The Prosecutor can make a formal complaint against news agencies that fail to protect the identity of the aggrieved woman of rape and sexual assault.

<sup>26</sup> Law Commission of India; 198<sup>th</sup> Report 'Witness Identity Protection and Witness Protection Programmes' (2006)

<sup>27</sup> See Press Council of India; PR/16/2003-04 Dated 19.3.04; Sourced from: <[presscouncil.nic.in/OldWebsite/press\\_Releases/pr7d.HTM](http://presscouncil.nic.in/OldWebsite/press_Releases/pr7d.HTM)>

## ROLE OF THE PROSECUTOR: POST TRIAL

- ***Appeal***

As per Sections 377 and 378 of CrPC, the State Government may direct the Public Prosecutor to file an appeal to the Sessions Court, on the ground of inadequacy of sentence or in case of acquittal, respectively.

However, the amendments to the CrPC in 2008 has put the aggrieved woman/survivor on a higher pedestal by making an enabling provision in the Proviso to Section 372 of CrPC. As per this proviso –

*....the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation....*

Thus, the Prosecutor shall ensure that the aggrieved woman shall be provided attested copy of judgment so that she can have right to appeal under proviso to S. 372 of CrPC.

- ***Recommending Compensation for Aggrieved woman/survivor***

Under Section 357 CrPC, an order for compensation can be passed when the Court imposes a sentence of fine or where fine forms a part of the sentence. Sub-section (3) also empowers the Court to order compensation even in cases where fine does not form part of the sentence, in view of the loss or injury suffered. The order for compensation under this provision is passed at the conclusion of the trial, or when disposing off a revision application.

Compensation under Section 357 CrPC may be ordered in the circumstances, *inter alia*:

- In defraying the expenses properly incurred in the prosecution;
- In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

In *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>28</sup>, the Supreme Court expanded the scope of this provision to allow interim compensation to be paid to survivor(s) of rape and sexual assault.

The Prosecutor may, at the conclusion of the trial, recommend to the Court, to award compensation under Section 357 CrPC.

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<sup>28</sup> AIR 1996 SC 922

### **Victim Compensation Scheme under Section 357A CrPC**

State Governments are required to prepare and notify a Victim Compensation Scheme to provide funds for compensation to the victim and dependents who have suffered losses and need rehabilitation. On the Court's recommendation for compensation, the District/State Legal Service Authority shall decide the quantum of compensation to be awarded.

Where the offender is not traced or identified and the trial does not take place, the identified victim and her dependents, can make an application to the District/State Legal Service Authority for compensation under Section 357A(4) CrPC.

On Court's recommendation or on receipt of an application, the District or State Legal Service Authority shall complete an enquiry within two months and award adequate compensation.

- ***Continuing Victim/Witness Protection after Accused is Acquitted***

This is an important factor for the Prosecutor to consider and act upon. While this may be difficult to successfully argue given the acquittal, the Prosecutor should press upon this. This may be possible to impress upon in cases where the acquittal is solely or primarily due to witnesses turning hostile, negative medical evidence etc.

Should the materials and history of the case warrant, the Prosecutor with the help of the risk assessment undertaken by the case worker/private lawyer and the available Safety Plan, must pray to the Court for specific directions towards victim/witness protection. This may include restraint orders against the acquitted person.

- ***Coordination with Aggrieved woman's Lawyer***

Section 302(1) CrPC provides the only limited scenario in which a legal aid/private lawyer can intervene in the prosecution case, on behalf of the aggrieved woman or the complainant. Her/his role is subjected to proviso of Sections 24(8) and 301(2) of the CrPC:

- To act under the instructions of the Public Prosecutor and take the permission of the Court if a Special Public Prosecutor has been appointed to conduct the case, and assist the prosecution; and
- After the evidence of all the witnesses is recorded, to submit written arguments to the Court with its permission.

Under Section 2(u), CrPC, a person acting under the Public Prosecutor must be considered a Public Prosecutor, and, therefore, the general responsibilities and obligations of Public

Prosecutor will apply to a private or legal aid lawyer limited to the extent of the case in which he is assisting the prosecution.

In *Delhi Domestic Working Women's Forum v. Union of India*<sup>29</sup>, a 3-judge Bench of Hon'ble Supreme Court said that

*'The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance.'*

In view of the above, following must be considered by the Prosecutor when coordinating with the private lawyer (which includes legal aid lawyer) of the aggrieved woman:

- The Prosecutor must allow the private lawyer to brief him as to relevant law and facts. This is particularly important since the private lawyer would have interacted with the aggrieved woman/survivor extensively and may be privy to information or may be able to suggest a better legal strategy.
- The Prosecutor may also allow the private lawyer to have access to the case file, with the exception of the Case Diary.
- The private lawyer in his turn, should keep the Prosecutor informed about the needs and circumstances of the aggrieved woman/survivor throughout the proceedings. This includes in particular, the assistance sought by the aggrieved woman/survivor such as medical or psycho-social assistance, as well as the need for witness protection.

The expression in Section 301(2) of the Code, that is, "the Public Prosecutor...in charge of the case shall conduct the prosecution, and the pleader so instructed (by any private person) shall act therein under the directions of Public Prosecutor...", permits extensive assistance by the survivor's lawyer.

The Prosecutor may also consider allowing the private lawyer to supplement oral submissions before the Court.

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<sup>29</sup>1995 SCC (1) 14

## Appendix I: Table Indicative Of Type Of Evidence To Be Collected

**Note:** The nature of evidence based on history of sexual violence is important information for the Prosecutor since it enables her/him to identify what is legally permissible and medically feasible evidence. Prosecutors should also be well versed with understanding the nature of medical evidence to be collected in specific forms of sexual violence. Similarly they should also be aware of the limitations of medical evidence. Given this fact the table has been included.

History of sexual violence	Type of swab	Purpose	Points to consider
<b>Peno-vaginal</b>	Vaginal swabs	- Semen/sperm detection -lubricant -DNA	-whether ejaculation occurred inside vagina or outside -use of condom
	Body swabs	-Semen/sperm detection -saliva (in case of sucking/licking)	-if ejaculation occurred outside
<b>Peno-anal</b>	Anal swabs	-Semen/sperm detection -DNA -lubricant -faecal matter	-whether ejaculation occurred inside anus or outside -use of condom
	Body swabs	-Semen/sperm detection -saliva (in case of sucking/licking)	-if ejaculation occurred outside
<b>Peno-oral</b>	Oral swabs	-Semen/sperm detection -DNA -saliva	-whether ejaculation occurred inside mouth or outside -use of condom
	Body swabs	-Semen/sperm detection -saliva (in case of sucking/licking)	-if ejaculation occurred outside
<b>Use of objects</b>	Swab of the orifice (anal, vaginal and/or oral)	Lubricant	Detection of lubricant used if any
<b>Use of body parts (fingering)</b>	Swab of the orifice (anal, vaginal and/ or oral)	Lubricant	
<b>Masturbation</b>	Swab of the orifice/ body part	-Semen/sperm detection -DNA -lubricant	-whether ejaculation occurred or not -if ejaculated in orifice or body parts

## **Appendix II: Monitoring Indicators for Prosecutors**

- **Knowledge of relevant laws, procedures and practices**, including specific High Court and District Court Rules and practice directions issued from time to time
- **Functional Competency and sensitivity** and following appropriate legal procedure in interaction with the aggrieved woman (including asking for interpreters/counselors/case workers etc.
- **Case Preparation, Bail opposition, Compensation:** whether case strategy evolved and in consultation with the IO, survivor and her lawyer; effectiveness of the case strategy (history with the perpetrator, if any such as stalking/harassment, taken note of); robustness of the research and case preparation (whether issues such as safety risks and safety plan, all higher court judgments incorporated); whether bail application opposed promptly and the result; whether application for compensation made and follow-up regarding this in coordination with DLSA/legal aid lawyer
- **Conclusion of Arguments:** the nature of documents submitted/ filed by the Public Prosecutor as evidence during the course of the trial; witnesses called for by the Prosecution; time taken for conclusion of evidence; grounds for withdrawal of prosecution, if any
- **Coordination with other stakeholders:** whether coordinates effectively and proactively with IO, examining doctor, and Legal Aid/DLSA lawyer or Survivor's private lawyer, as the case may be.



**ONE STOP CENTRE, RAIPUR, CHHATTISGARH**